

MISSOURI CLEAN WATER COMMISSION MEETING
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Room
1101 Riverside Drive
Jefferson City, MO 65101
March 1, 2006

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Ron Hardecke, Commissioner, Missouri Clean Water Commission
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission

Edward Galbraith, Director of Staff, Missouri Clean Water Commission
Tim Duggan, Counsel, Missouri Clean Water Commission
Malinda Overhoff, Secretary, Missouri Clean Water Commission

Jim Alexander, Department of Natural Resources, Rolla, Missouri
Ken Arnold, Henley, Missouri
Darrell Barber, Department of Natural Resources, Jefferson City, Missouri
George Barbee, CAS Construction, Topeka, Kansas
Karen Bataille, Missouri Conservation Department, Columbia, Missouri
Beth Bates, Protect Mark Twain Lake, Columbia, Missouri
Bob Bernard, Fulton, Missouri
Diane Bernard, Fulton, Missouri
Tony Bowman, Protect Mark Twain Lake, Monroe City, Missouri
Robert Brundage, Jefferson City, Missouri
Alan Buchanan, MO American Fisheries Society, Columbia, Missouri
Mark Buersmeyer, Department of Natural Resources, Jefferson City, Missouri
John Carter, The Doe Run Company, Viburnum, Missouri
Bob Crumb, City of Warrensburg, Missouri
Allen Decker, MRWA, Gray Summit, Missouri
John Delashmit, EPA, Kansas City, Kansas
Paul Dickerson, Department of Natural Resources, Jefferson City, Missouri
Mike Duvall, St. Charles County Government, St. Charles, Missouri
Gary Ely, Protect Mark Twain Lake Assoc., Monroe City, Missouri
Joe Engeln, Department of Natural Resources, Jefferson City, Missouri
Chris Erisman, City of Seneca, Joplin, Missouri
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri
Richard Harris, Department of Natural Resources, Jefferson City, Missouri

Ted Heisel, MO Coalition for the Environment, St. Louis, Missouri
Leslie Holloway, MO Farm Bureau, Jefferson City, Missouri
Ogle Hopkins, MO Egg Council, Columbia, Missouri
Jim Kistler, Associated Industries of Missouri, Jefferson City, Missouri
Rebecca Landewe, U.S. Environmental Protection Agency, Kansas City, Kansas
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
John Lodderhose, MSD, St. Louis, Missouri
Melissa Manda, Brydon Swearngen and England, Jefferson City, Missouri
Bruce Martin, Department of Natural Resources, Jefferson City, Missouri
Sarah Maguffee, CMB Rhodes, Jefferson City, Missouri
Joe Maxwell, Mark Twain Lake Area, Mexico, Missouri
Refaat Mefrakis, Department of Natural Resources, Jefferson City, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Susan Myers, MSD, St. Louis, Missouri
Gene Nickel, Department of Natural Resources, Jefferson City, Missouri
Earl Pabst, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, Forrester Group, Jefferson City, Missouri
J. Keith Phipps, MDNR/City of Moberly, Moberly, Missouri
Norb Plassmeyer, Osage Solutions, L.L.C., Jefferson City, Missouri
David Potthast, Department of Natural Resources, Jefferson City, Missouri
Jerry J. Presley, MFDA, Centertown, Missouri
Peter Price, Department of Natural Resources, Rolla, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Ted Salveter, City Utilities, Springfield, Missouri
Kurt Schaefer, Department of Natural Resources, Jefferson City, Missouri
Candy Schilling, ERC, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Charles E. Sears, Sedalia, Missouri
Sherry Sears, Sedalia, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Mike Sloan, Swiss Meat & Sausage Co., Hermann, Missouri
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri
Robert Stout, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, EIERA, Jefferson City, Missouri
Roger Walker, REGFORM, Jefferson City, Missouri
Mary West, Mo Public Utility Alliance, Columbia, Missouri
Ray West, Hood-Rich, Inc., Springfield, Missouri
Betty Wyse, ERC, Jefferson City, Missouri
Patrick Young, Archer Engineers, Lee's Summit, Missouri

1 BEFORE THE CLEAN WATER COMMISSION
2 STATE OF MISSOURI

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5 MEETING OF:
6 MARCH 1, 2006

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8 CONDUCTED BY:
9 CHAIRMAN THOMAS A. HERRMANN

10 Clean Water Commission
11 Department of Natural Resources

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TRANSCRIBED FROM AUDIO TAPES BY:
LISA M. BANKS, CCR

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1 CHAIRMAN HERRMANN: Good morning.
2 Call the meeting of the Clean Water Commission to order
3 on March the 1st. It looks like spring outside.

4 Introduce to you the people at the head table. I'm Tom
5 Herrmann, Chairman of the Commission, from St. Louis,
6 Missouri.

7 On my left is Ron Hardecke,
8 Commissioner from Owensville; Kristin Perry,
9 Commissioner from Bowling Green; Commissioner Cosette
10 Kelly from Independence; and Commissioner Bill Easley
11 from Cassville. Commissioner Davis Minton is unable to
12 attend today.

13 On my right is Ed Galbraith, the
14 director of the staff of the Water Protection Program.
15 Next is Tim Dugan, Assistant Attorney General, and next
16 is Malinda Overhoff, the secretary to the staff and the
17 secretary to the Commission. And Ed, I think you have
18 a few people you'd like to introduce.

19 MR. GALBRAITH: Thank you,
20 Mr. Chairman. I'd like to introduce Joe Boland and Bill
21 Foster. Joe and Bill, if you'd just stand up real
22 quick. These are the -- this is the new leadership
23 team for the financial assistance center and we're
24 happy to have them on board.

25 Bill is on loan to us from the

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1 Ombudsman program for six months, and he's going to be,
2 I guess, in a special leadership role to help with sort
3 of a diagnostic and restructuring and kind of helping
4 us trouble shoot and make improvements to the FAC. Joe
5 is in the -- he's the -- I'd guess who you'd call the
6 permanent director of the FAC and we're glad to have
7 them -- them both on board, so we want to welcome them.

8 CHAIRMAN HERRMANN: Thank you.
9 Welcome. Our first item on the agenda is the public
10 hearing for the Proposed State Fiscal Year 2007 State
11 Revolving Fund Intended Use Plan.

12 (WHEREIN; this portion of meeting
13 previously transcribed by court reporter.)

14 CHAIRMAN HERRMANN: Moving to Tab 2
15 in the agenda booklet, we have the minutes of the
16 January 4, 2006 Clean Water Commission meeting. Any
17 corrections? Additions?

18 COMMISSIONER PERRY: I have a
19 correction, Mr. Chairman.

20 CHAIRMAN HERRMANN: Yes.

21 COMMISSIONER PERRY: On Page 85,
22 Line 12 on page -- where it says 0037, I would like --
23 since it's a word I created, I would like it to be
24 written correctly. I was not referring to any person
25 using the word geezors, but I was saying I was out my

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1 geezoos. I have discovered through a journalist friend
2 of mine that geezoos is not actually a term, but it's
3 one that I tend to use on a regular basis.

4 CHAIRMAN HERRMANN: Is that called
5 a colloquialism?

6 COMMISSIONER PERRY: I can assure
7 you it's not legally acceptable.

8 CHAIRMAN HERRMANN: I see. On
9 Page 99, Line 13, it says the initial review committee
10 recommended presentations to the Commission,
11 recommended that the use of whole body contact

12 recreation be -- recreational use be retained. And the
13 recommendation of the committee was inconclusive, not
14 to be retained.

15 On Page 118, Line 21, the quote is
16 attributed to Mr. Sherburne and that statement was
17 made by Chairman Herrmann. I have several
18 clarifications, but are there any other corrections or
19 additions?

20 Hearing none, the Chair would ask
21 for a motion to accept the minutes and enter them into
22 the record.

23 COMMISSIONER PERRY: I move that
24 we accept the minutes as amended.

25 COMMISSIONER KELLY: Second the

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1 motion.

2 CHAIRMAN HERRMANN: Did I hear a
3 second?

4 COMMISSIONER KELLY: Yes, second.

5 CHAIRMAN HERRMANN: Okay. Please
6 call for the vote Malinda.

7 MS. OVERHOFF: Commissioner Easley?

8 MR. EASLEY: Abstain.

9 MS. OVERHOFF: Commissioner Kelly?

10 MS. KELLY: Yes.

11 MS. OVERHOFF: Commissioner Perry?

12 MS. PERRY: Yes.

13 MS. OVERHOFF: Commissioner

14 Hardecke?

15 MR. HARDECKE: Yes.
16 MS. OVERHOFF: Chairman Herrmann?
17 CHAIRMAN HERRMANN: Yes.
18 Clarifications in the minutes on Page 85, Line 5,
19 Mr. Alderman was quoted as saying, "You used the word
20 approve." We don't approve the methodology. We work at
21 the State to try to get an agreement whether
22 methodology would work, but we do not approve or
23 disapprove methodologies. And based on past actions
24 and -- of EPA, I would say that that's not a correct
25 statement.

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1 On Page 97, Line 17, Mr.
2 COMMISSIONER PERRY: Okay. Which
3 one of the 17's?
4 CHAIRMAN HERRMANN: I'm sorry.
5 Under 0063. There at the tail end of 0063.
6 COMMISSIONER PERRY: Okay.
7 CHAIRMAN HERRMANN: Mr. Schroeder
8 was referring to the depth information from the -- the
9 protocol, the Commission's protocol for whole body
10 contact. And the analysis word depth measurements
11 where protocol specifies that any water that has at
12 least a meter depth would be rendered as obtainable for
13 whole body contact recreation or has an average overall
14 depth of half a meter.
15 I think that came under
16 considerable discussion during this presentation, and I
17 would suggest that next time we consider the revisions
18 of the protocol. The intent was in the formation of
19 the protocol that it -- the stream flow be at least one

20 meter deep and the average cross-section across that
21 stream -- the full width of that stream, be averaged
22 one half meter. And that would be a future
23 consideration for the protocol revision, so that that
24 clarifies the intent.

25 MR. GALBRAITH: So overall,

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1 you would have cross-section?

2 CHAIRMAN HERRMANN: Yes. Over the
3 entire cross-section rather than -- as some people
4 contended during the discussion, that they took
5 measurements during the -- down the length of the
6 stream.

7 On Page 111, Line 9, Mr. Galbraith
8 said does there -- and we were referring now to Coon
9 Creek. And after the denial of the motion to retain or
10 to have full body contact designation, Mr. Galbraith
11 said, "Does there need to be -- I don't think there
12 needs to be. It stands as -- it stands as a whole body
13 contact as we did before." And I think the opposite is
14 true that we denied the whole body contact; isn't that
15 correct?

16 MR. GALBRAITH: Yes.

17 CHAIRMAN HERRMANN: Yes. Okay.
18 Thank you. Anything further on the minutes?

19 COMMISSIONER PERRY:

20 Mr. Chairman?

21 CHAIRMAN HERRMANN: Yes?

22 COMMISSIONER PERRY: Does that
23 last point need to be made as an amendment to the

24 minutes?

25 CHAIRMAN HERRMANN: Yes, for

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1 clarification, I think it should be.

2 COMMISSIONER PERRY: So can I
3 move that we go back and re-amend the minutes to
4 include --

5 CHAIRMAN HERRMANN: Yes.

6 COMMISSIONER PERRY: -- that
7 correction?

8 CHAIRMAN HERRMANN: Yes.

9 COMMISSIONER PERRY: That was
10 just made.

11 CHAIRMAN HERRMANN: Okay.

12 COMMISSIONER HARDECKE: I'll second
13 that.

14 CHAIRMAN HERRMANN: Moved to
15 second. Any discussion? If there's no discussion and
16 no dissension, the motion will be approved. Number 3,
17 update on the Black River restoration. Do we have --

18 MR. GALBRAITH:

19 Mr. Chairman, Kurt Schaefer is going to orchestrate a
20 presentation for us on this. We had a number of
21 presenters lined up. Unfortunately, as he'll detail,
22 one of our presenters had a death in the family, so
23 we'll only basically, have half of the presentation
24 today on the -- on the Taum Sauk Reservoir and the
25 water quality in the Black River. We'll finish up or

1 present the other half of the presentation at our May
2 meeting. Kurt?

3 MR. SCHAEFER: Thank you.
4 Commissioners, I'm Kurt Schaefer. I'm Deputy Director
5 and general counsel for the department. We wanted to
6 give you an update today on -- on what's going on down
7 at Reynolds County with the response to the Ameren UE
8 Taum Sauk Reservoir failure.

9 Your previous meeting, the first
10 week of January, we would have liked to have given you
11 a presentation at that time, but that was just about
12 two weeks after the incident occurred on December 14th,
13 so we were still kind of in -- in the mode of putting
14 together what we've had. We've had a little more time
15 to put that together, so we wanted to give you a
16 presentation of -- of what the facility is; what
17 occurred; and kind of where we're at at this point.

18 Here today to give you part of that
19 presentation is Mr. Jim Alexander. He's the Chief Dam
20 Safety Inspector or engineer for the State of Missouri.
21 He's got a presentation for you, which essentially lays
22 out what this facility is; how it operates. Mr. Randy
23 Crawford, with DNR's Environmental Services Program,
24 was going to give you the second part of that
25 presentation, which was the environmental stabilization

1 work that's been done to date and kind of where we're
2 going. Unfortunately, because of the personal matters

3 that he has, he could n't be here today. But we will
4 give you that at your next meeting.

5 I think as most of you know, the
6 incident occurred on December 14th, 2005. When that
7 upper reservoir failed, it released approximately 1.5
8 billion gallons of water, which came down the mountain
9 side and caused substantial impairment to the East Fork
10 of the Black River. Not only there at Johnson Shut-ins
11 State Park, but down below the park through what is
12 called the lower reservoir for the Ameren facility,
13 down past the lower reservoir, through the Black River,
14 down, really, to Clear Water Lake.

15 This predominately is a water
16 quality issue. As you've seen from your packets, to
17 date we've issued three formal emergency declaration
18 abatement orders to Ameren UE. We've done that under
19 the department's authority under 644.056, I believe it
20 is. So the authority that we're really exercising is
21 based on the impairment to the water quality. In
22 addition to those three orders, we've issued numerous
23 letters and we issued daily directives to Ameren. And
24 let me explain to you kind of how it's working on-site.

25 December 14th was a Wednesday. By

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1 that weekend, we had a project trailer set up on-site.
2 The department has an on-scene coordinator, which is
3 composed of our EER, which is our Emergency Response
4 Unit, and the Department of Parks, because most of the
5 damage at that portion, is in the park. And essentially,
6 since that first weekend, they have been on-site acting

7 as on-scene coordinator. When we've issued these
8 orders to Ameren UE. We have an on-site presence; have
9 had one since the day of the incident and will continue
10 to have one for some time to come; overseeing the
11 activities that we're directing Ameren to do.

12 While we don't have the second part
13 of the presentation today, I do have some facts and
14 some other information that -- that may be enlightening
15 to you, kind of on -- on the environmental
16 stabilization phase, because that's really -- even
17 though it's been since December 14th, we are still in
18 what we're calling the environmental stabilization
19 phase. We are still stabilizing the East Fork, the
20 Black River, and the Black River below that.

21 Incident to that, there's some
22 issues that go on in the park because some of the
23 things we do now have an implication on, you know, how
24 this park restoration's going to go. But at this
25 point, we still consider this primarily an

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1 environmental stabilization project and a water quality
2 issue. So I'll answer any questions you have. If you
3 have any right now, I'll answer them now, but I'll
4 let -- I'll let Jim Alexander come up and give you a
5 presentation on the facility itself.

6 MR. GALBRAITH: Do you have
7 slides?

8 MR. ALEXANDER: Yes, we do.

9 COMMISSIONER PERRY: That was
10 your job.

11 (Indiscernible background
12 speakers.)

13 MR. ALEXANDER: Our involvement
14 with the Taum Sauk upper reservoir failure really
15 started several weeks prior to the actual failure of
16 the dam, when we were contacted by the Federal Energy
17 Regulatory Commission, and notified that there was
18 going to a trial run of their emergency action plan
19 coming up on December 14th. So one thing you can say
20 is be careful what you plan for, it could happen. And
21 at least all of their information was up-to-date and
22 available to them for use on that morning.

23 When I received the phone call
24 early that morning that -- notifying me that the upper
25 reservoir had failed, my first reaction was, no they're

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1 just running through their emergency action plan. And
2 I was again assured that, no, it had failed and there
3 was a distinct -- there was a very definite problem out
4 there in which we immediately dispatched a couple of
5 engineers down to look at the site.

6 Much of what I'm going to show you
7 today, just involved the failure itself; what happened
8 downstream as a result of the failure; the damages that
9 occurred as water traveled down the mountainside,
10 through the Johnson Shut-in State Park, and then
11 ultimately into the lower reservoir.

12 I have to work -- the remote's not
13 working here, so -- yeah. Keep going. If you go to
14 the facility and to the visitor center, you will see

19 the turbines downstream where the hydropower is
20 generated; the tunnels running roughly in through this
21 direction. And there are two turbines in this area
22 that generate the hydropower. This is a -- what they
23 consider to be a peak power generating facility.

24 Basically that means that water
25 from the lower reservoir is pumped up into the upper

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1 reservoir during off-peak electric rates -- or off-peak
2 hours for electrical rates. That's when the hydropower
3 is at its cheapest. It is released back into the lower
4 reservoir during on-peak hours, which generally occur
5 in the early morning hours as people are getting up to
6 go to work, or getting home from work and starting to
7 fix supper.

8 So this plant is operated -- it
9 starts, stopped very quickly, using ultimate control of
10 it. It's run from -- remotely from Bagnell -- or Lake
11 of the Ozarks facility. And it is -- when the highest
12 rates are available for hydropower generation, that's
13 when they release this water and as soon as the rates
14 start decreasing, then they shut it down. Go ahead.

15 Here's the two turbines downstream.
16 These turbines during -- when they're not generating
17 electricity can be reversed and be used as pumps and
18 pump the water back up into the upper reservoir. That
19 usually occurs during the night when electric rates are
20 the cheapest. The estimated capacity of those pumps is
21 estimated to be somewhere in the neighborhood of --
22 they're capable of pumping about 5000 CFS back up in

23 the upper reservoir. Go ahead.
24 Just another picture of the area
25 downstream where the turbines are located and the

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1 discharge going into the lower reservoir. Go ahead.
2 One of the turbines. Go ahead.
3 The lower reservoir. The dam for
4 the lower reservoir consists of a gravity -- concrete
5 gravity structure. Water is designed to just flow
6 basically over the top of it under normal conditions.
7 Now, remember that this water is pumped into the upper
8 reservoir and basically recycled back and forth. The
9 upper reservoir was never intended to be completely
10 drained.

11 They tried to keep at least 20
12 percent of the storage capacity there at all times, so
13 discharges over this dam unless you did have rainfall,
14 where very -- where few operating of the upper
15 structures should not cause flow over this dam. It
16 does have a drainage area to it other than just the
17 upper reservoir. Coming down into it, it has a
18 significant drainage area. So if you get enough
19 rainfall in the area, it can cause water to flow over
20 the dam. Go ahead.

21 It's located here in southeast
22 Missouri, about 100 miles south of St. Louis. Go
23 ahead. Located downstream of this reservoir is one of
24 our most beautiful state parks in our state park
25 system. It's called the Taum -- or the Johnson Shut-in

1 State Park. You can see a very beautiful layout. I
2 just took some of these off of the state park website
3 to show you some of the conditions prior to the -- the
4 failure of the upper reservoir. Go ahead.

5 It's used by a number of people in
6 the summertime especially. It's a very high use state
7 park and a lot of kids and people like to come down and
8 swim in the Shut-in's environment. Go ahead. Another
9 picture of the same.

10 Very lucky that this thing occurred
11 during the winter months when the state park was empty
12 for the most part. If it had occurred during the
13 summer months when the park was full of campers, or
14 during the daytime when it was full of campers and
15 swimmers, the death toll could have been significant.
16 Go ahead.

17 This reservoir had a history of
18 seepage problems over the years. A variety of ways
19 have been taken to try to seal the lake so that it
20 didn't leak. Leakage was loss of hydropower generating
21 capacity and meant money, so a variety of ways have
22 been taken to try to seal the reservoir. Some of those
23 consisted of concrete linings, plastic linings.
24 There's asphalt in the bottom of the reservoir. A
25 variety of ways of trying to make it to not leak.

1 Prior to 2004, this seepage problem

2 had developed to the point to where in the 24-hour
3 period, we've been told that it would leak down two to
4 two-and-a-half feet in a 24-hour period. That water
5 was collected as it leaked out of the reservoir. And
6 you'll see pictures of a little holding pond downstream
7 that it was collected in. And a pump was set up down
8 in this area. The pond's down in -- down in here
9 somewhere. But it was pumped in -- back into the
10 reservoir to try to keep the reservoir full.

11 The tunnel where the water's
12 released is located right there. And you'll see better
13 pictures of that as we go. Go ahead.

14 Just another photo of the reservoir
15 as it was full -- or as an empty reservoir. There is
16 the pumping facility, I believe--

17 (End of Tape 1, Side A)

18 (Start of Tape 1, Side B)

19 MR. ALEXANDER: One of the
20 important things that are -- I want to point out here
21 there was a no spillway on this -- on this upper
22 reservoir. What they relied on to keep -- when they
23 were pumping it full was instrumentation that was
24 mounted on the side of the reservoir rim. Now, you can
25 see that instrumentation here. It's basically a set of

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1 instruments that run down into the water that detect
2 the water level and stop the pumps at different
3 intervals as the reservoir fills up.

4 You can see as -- the mounting
5 here, there supposed to be straight. They're mounted

6 with a series of U-bolts to the side of the reservoir
7 rim to keep them in place. Go ahead.

8 Here you can see the tunnel.
9 That's 27-foot diameter. There's a fence around it.
10 That rock in this area gets very slick. Anybody coming
11 up to look over -- everybody wants to look down that
12 hole. No one wanted to take a tumble down through
13 there, so they built a fence around it. Go ahead.

14 Here's the pool of the downstream
15 toe of this dam. It was to collect the seepage water
16 and then pump it back up through this -- this pipeline
17 here, back into the upper reservoir. Okay.

18 There's a picture looking down from
19 the top of the rim, down the pipe to the pump house.
20 Go ahead. Okay. In 2004, now this -- the lake was
21 leaking. They were losing two to two-and-a-half feet
22 of water per day from it, so they decided that they
23 were going to try to do another lining of the
24 reservoir. And for this particular time, they used
25 plastic -- a two-layer plastic liner that had -- the

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1 seams on it had to be sealed and welded shut.

2 It was connected to -- and you'll
3 see some pictures of this later -- connected up in here
4 to the concrete parapet wall to the top of the
5 reservoir. And then it ran down to the reservoir
6 bottom and connected to a wall that runs around the
7 reservoir bottom there. The bottom again was sealed
8 with asphalt. You can see the installation of that as
9 it was underway. Go ahead.

10 Just some more pictures of the

15 what it actually is because of the bow in the line and
16 bringing up the bottom of this instrumentation to a
17 higher elevation. Go ahead.

18 Here's another picture of this.
19 You can see the bow here. The U-bolts have broken and
20 it now has this bow in here, and that made it very
21 difficult for them to be able to determine what the
22 water level in the reservoir was at any particular
23 time. Go ahead.

24 Here's the -- some -- go ahead.
25 Okay. When the lake failed, or the upper reservoir

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1 failed, it occurred in the northwest corner of it,
2 which I've already showed you. It flowed down the
3 backside of this -- of the Taum Sauk mountain through a
4 highly wooded area; made its way down through here;
5 actually crossed the Black -- the Black River here, and
6 broke into -- kind of developed into two waves, kind of
7 wide at this location.

8 The first wave broke off and went
9 south here, and was the highest wave that went down
10 through the state park. The other part of it broke off
11 and went in a northerly direction taking out the park
12 superintendent's home and taking them and depositing
13 them up here in this field where they were later found.
14 The water made a clockwise rotation then and came back
15 down and made its way down through the park into the
16 lower reservoir. Go ahead.

17 This was the morning of the

18 failure. You can see it was a very bitterly cold
19 morning. A lot of water from the -- all that's
20 transpired that morning is in there creating a fog-like
21 condition. This is looking up towards the reservoir
22 where it would be up in this location here. Go ahead.

23 You can see what was densely wooded
24 at one time has all been -- it's about 600 to 800 feet
25 wide here. All of the trees, roots, all the way -- top

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1 soil, everything down to the rhyolite, bedrock, was
2 stripped and made its way down towards the Black River.
3 Go ahead.

4 Here's a picture of the failure
5 section of the -- you'll see a lot more of that as it
6 comes. You can see the make up of the embankment in
7 this particular area here. It was a sand/rock type
8 cobble material. Go ahead.

9 Here's another photo looking at the
10 breach section here. You can see water -- the
11 reservoir's over here. It made its way out this way
12 and on down the stream. Go ahead. Go ahead. Go
13 ahead.

14 You can see many of the concrete
15 panels. These panels all -- are all numbered on the
16 backside of them here. You will -- if you read
17 anything in -- in -- as this investigation continues,
18 you'll hear a lot of references made to particular
19 panels. I can't remember what the numbers of these
20 were. These were somewhere between, I think, panel 80
21 and 100, or something like that in this area right

22 here. But this is where the failure occurred. You can
23 see many of the panels just broke off and went on down
24 the stream. Go ahead.

25 Okay. This is the bottom of the

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1 reservoir. Now you're seeing that here. This is the
2 black plastic liners that, not necessarily the most
3 recent one, but some that have been used in the past.
4 You can see the concrete has been used in the bottom
5 and you got asphalt in there as well. And you can see
6 that underneath it was basically a rock fill that
7 was -- made up the foundation of the bottom of the
8 reservoir. Go ahead.

9 Okay. The failure occurred in this
10 area. Water going off this way. The park
11 superintendent's house was located down in this area.
12 And Black River is coming off this way going through
13 Johnson Shut-in State Park, somewhere in that area
14 right there. Go ahead.

15 Just an aerial photo of the -- of
16 the slide -- or of the failure. You can see as it came
17 down here stripping off all the material. There's a
18 lot of material that's been deposited both along the
19 hillside as it made its way towards Black River. You
20 can see the rhyolite sand here and there's -- they've
21 cornered the market on rhyolite sand down in that area.
22 There's a lot of it. And a lot of that came from this
23 embankment when it failed, but it made its way to the
24 Black River.

25 And what you'll see, to a large

1 extent downstream, is a combination of all this trees
2 and topsoil and all the rhyolite sand and rock, that
3 made its way down to Black River and is what's clogging
4 the river at this point. Go ahead. Go ahead.

5 Okay. The park superintendent's
6 house now, just for reference, is down in this area.
7 Black River is flowing off this direction. Go ahead.
8 Go ahead. Okay. Go ahead.

9 Okay. Here is the -- I believe,
10 the park superintendent's house is right here. The
11 flood came down. There's the upper reservoir. It came
12 down here. It split off, now remember. The two waves
13 split off. The first wave made its way up through here
14 and went on downstream. The second wave hit the park
15 superintendent's house, totally obliterating it.
16 Basically taking all that, washing it out in here.
17 There's another house located right here that was
18 untouched. It went around this side of the house, come
19 down the backside and made its way back down into
20 the -- to the Black River and went on downstream.

21 The family -- the Toops family was
22 found up in here by some people that -- some of whom
23 were truck drivers that were driving across this road
24 that morning and actually the wave washed them off of
25 the road. It turned, I think -- turned their trucks

1 over. They climbed up on top of the trucks and escaped

2 injury that way.

3 This wave that came through was
4 very high, but it was short. It wasn't -- it didn't
5 have a lot of volume to it. The failure occurred in --
6 supposedly in 12 minutes. It completely drained 1.5
7 billion gallons of water from the upper reservoir in 12
8 minutes. That is, for the engineers around, that's
9 about 4,500 to 5,000 acre feet of water that was
10 released in a 12-minute period.

11 And if you -- this is not
12 scientific by any means, but if you sit down as
13 engineers often do and try to figure out, well what
14 kind of flow that involved, it's somewhere -- as best
15 we can compute -- somewhere in the neighborhood of
16 250,000 CFS came down through there that morning.

17 It was a very -- we expect it was a
18 fairly high peaked wave that was short-lived and so as
19 quickly as the water came up, it went back down as
20 well. Go ahead.

21 A lot of geologist have made their
22 way out there and have taken a look at this. And they
23 like taking pictures of the geology. This really
24 excites them, but it basically is showing that it's
25 exposed all the way down to bedrock. And material all

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1 made its way down towards the Black River. Go ahead.
2 Go ahead.

3 Okay. If you go down in the state
4 park and get to looking downstream, what I showed you
5 before with the hiking trails, the camping facilities

6 and all, this is basically what it looks like now. Go
7 ahead. Go ahead.

8 A lot of the material -- and I
9 think that is what this picture is showing -- this --
10 when all of the material that was scoured out of the --
11 of the side of the hill as it made its way towards
12 Black River, it actually collected in Black River at
13 this point, and created a dam, an artificial dam of
14 sorts, and began to store -- back up water on the Black
15 River. There has been a channel carved around it now
16 to where -- to relieve the water that continued to
17 rise. And it now has -- it's making its way on
18 downstream and this has been drained down. Go ahead.

19 Okay. There is the park
20 superintendent -- what's left of the park
21 superintendent's house. The water came from this
22 direction, hit the house, took it across the road and
23 made its way back around, went on downstream. The
24 Toops family was found over in this area. It's
25 remarkable that as much -- there was -- I mean that was

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1 a three-bedroom ranch style home, and you see
2 absolutely no remains of that home whatsoever down
3 there. It -- I don't know where it went to, but I have
4 not seen -- in looking at the rubble, I've never seen
5 any sign of that home. Go ahead.

6 This is the park entrance, it looks
7 like there. The trucks that were washed off -- there
8 was a semi and a dump truck that were washed off the
9 road. They were on this road right here, and washed

10 off the other side. Go ahead.

11 That's the Toops' home, the
12 foundation left from the Toops' home. Go ahead.

13 That's one of the trucks that was washed off and they
14 pulled it back up onto the highway. Go ahead.

15 This is some of the debris. Lots
16 of logs and trees and roots and whatever. You know
17 there was just mountains of this stuff everywhere.
18 This is some that made its way down to the bridge and
19 has been collected -- collected on the upstream side of
20 the bridge. Go ahead.

21 Here again is a picture of the
22 park. Lots of mud, rhyolite sand everywhere. Lots of
23 trees and debris -- piles of debris now in the park.
24 Go ahead.

25 You see everywhere you look down

29

1 there this black plastic. This is the liner from the
2 upper reservoir that was placed in 2004. And you'll
3 see huge pieces of this that have been ripped out and
4 made its way downstream. Go ahead.

5 This is more of the devastation of
6 the forest land downstream. Go ahead. More of the
7 black plastic here. You can see the -- the television
8 folks starting to show up at this point. Go ahead.

9 This is the park office down in the
10 state park itself. You can see very clearly the high
11 water line on it. Wasn't destroyed, but significant
12 damage to it. Go ahead.

13 Some of the trees and logs and

14 debris that's collected around it. Go ahead. A lot of
15 rock, a lot of rhyolite rock and bedrock that rolled
16 out of the embankment and then was picked up whatever
17 it was able to pick up along the hillside as it made
18 its way towards Black River. It has all been deposited
19 now in Black River and there to have to be cleaned up.
20 Go ahead. Go ahead.

21 Here's an aerial photo of the
22 Shut-ins. This is the area where the -- everybody
23 likes to recreate. You can see although it wasn't
24 damaged to the point -- I mean it didn't destroy it by
25 any means, but a lot of sediment is now in there and

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1 clogging the water. You can see the color of the
2 water. What usually is crystal clear is now got a lot
3 of mud. Of course this is just not long after the
4 failure occurred too, so. Go ahead.

5 This is more debris downstream. Go
6 ahead. There's the Shut-ins as well. You can see the
7 sand. Not a whole lot of logs were -- were settled out
8 in this area, but there was some. Go ahead.

9 It made its way to the lower
10 reservoir. A lot of this sediment collected in the
11 upper -- the tail water of the upper reservoir, or in
12 the lower reservoir. I'm sorry. Go ahead.

13 You hear people refer to the bend
14 wall or the gravel trap dam. It's right in this area
15 right here. It's designed to -- when the water comes
16 through the turbines, if it's got gravel or whatever
17 with it, it's supposed to settle out in this area.

18 Well, it caught a lot of -- of this sediment in here
19 and you can see the reservoir, the gravel trap
20 reservoir is pretty well full and will be dredged out
21 eventually. But in addition to that, it wasn't able to
22 catch all of it. A lot of it made its way over this
23 and on downstream into the lower reservoir. Go ahead.

24 There's a photo down at the -- by
25 the dam a few days after the failure occurred. You can

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1 see the consistency of the water and all the material
2 that was in suspension. Go ahead.

3 The dam -- this is a picture of the
4 dam. It was reportedly overtopped. Somewhere to a
5 foot to 18 inches of water went over the top of it.
6 It's designed to be overtopped. It didn't -- it did
7 not do any damage and it prevented -- it caught the
8 majority of the water and prevented it from going on
9 downstream. Go ahead.

10 You can see how much sedimentation
11 went into it. A lot of -- it just looks about like a
12 cup of coffee with a lot of cream in it. Go ahead. Go
13 ahead.

14 This is the bridge downstream. You
15 can see -- pretty well by the time it got to here, the
16 majority of the water was trapped in the lower
17 reservoir and very little discharge went on downstream
18 from here. Go ahead. Go ahead.

19 One of the things that we've spent
20 a lot of time doing was looking at the parapet wall
21 because that's what -- okay -- what occurred there. Go

1 undermined to the point where it exposed the underside.
2 go ahead. Go ahead. More erosion pictures. Go ahead.
3 Go ahead. More -- you can see how narrow it made the
4 crest. It -- at one point in time, you could drive a
5 full-size pickup around this reservoir rim. You didn't
6 want to get out on the passenger side and try to go
7 around this other side of the pickup there, but you
8 could ride around it. It's not that way now. Go
9 ahead.

10 Here just shows, for the engineers,
11 what the concrete wall at the top of the -- of the
12 embankment looked like, is where it came together.
13 There was reportedly a copper water stop there, but
14 they used a foam-like substance that they squirted in
15 there that hardened to try to seal the joints and to
16 try to make it water tight. And you can see here this
17 piece of steel sticking out here. That was how the
18 liner that was installed in 2004 was attached to the
19 side of the reservoir. Go ahead.

20 I think we're about done. There's
21 a -- this is a tunnel down in here. That's how they
22 get into the reservoir when it's dry, to do their
23 maintenance. You get in through it -- go in through a
24 tunnel here and there's a steel metal gate on the
25 upstream side where it's sealed, bolted down so that the

1 thing will hold water. Go ahead.

2 There it is after the failure one
3 more time. Go ahead. That's it. If anyone has any
4 questions, I'd be glad to expand.

5 COMMISSIONER PERRY: Sir, a
6 couple of questions. First of all, I'd like to
7 compliment you. I think you did it -- it was a very
8 fine presentation. And you did a nice job of clearly
9 explaining what had happened.

10 MR. ALEXANDER: Thank you.

11 COMMISSIONER PERRY: I'm curious.
12 You seem to indicate that the percentage of storage on
13 that particular day was considerably lower than full
14 reservoir capacity. Now, what was that percentage?

15 MR. ALEXANDER: No. What I was
16 referring to is that under normal operating conditions,
17 they would never completely drain the reservoir.
18 They'd always try to keep 20 percent of the reservoir
19 full, or in there at all times. The morning that it
20 failed it was full.

21 COMMISSIONER PERRY: Was it
22 usually kept full?

23 MR. ALEXANDER: It -- they usually
24 pumped it full during the night so that early in the
25 morning, they could start making their releases. And

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1 it -- it didn't always -- it wasn't always full. They
2 wouldn't completely drain it at any particular stretch.
3 They'd do it in like 30, 45 minutes stretches. And
4 when it got down to a certain point, then they'd pump

5 it back full. But the particular morning, on December
6 14th, it was full all the way to the top.

7 COMMISSIONER HARDECKE: Those other
8 panels that showed bulges, did they presume that it had
9 overtopped in those locations and started to maybe give
10 there?

11 MR. SCHAEFER: At this point, and I
12 did want to point this out previously, there is an
13 ongoing investigation by several agencies on this
14 issue. And so as far as one thing we didn't want to do
15 today is, we're not going to speculate as to the cause
16 at this point. We wouldn't want to jeopardize any
17 investigation. And I think that that would be
18 inappropriate for us to make those speculations. But
19 those investigations are ongoing.

20 I think the presentation we wanted
21 to give you now is essentially factual observations as
22 we believe we've seen them, and that's pretty much what
23 we've done at this point.

24 CHAIRMAN HERRMANN: Kurt, I think
25 what this Commission would be most interested in is

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1 perhaps remediation, that's taken place up to this time
2 and --

3 MR. SCHAEFER: Yeah. It's really
4 unfortunate because Randy Crawford had a very nice
5 presentation and I -- the photos that you've seen from
6 Jim of the condition of, you know, the river, the park,
7 that's literally -- those photos are a compilation from
8 the day of the event to about three days after the

9 event. It does not look like that any more. It looks
10 substantially different.

11 And unfortunately that was -- that
12 was Randy's part of the presentation. And Randy
13 actually had the turbidity numbers to give you from the
14 day of the incident to where it is now. I can't give
15 you those exact numbers. We will give you that next
16 time, but I can tell you it is substantially better
17 than it was then.

18 Obviously our most immediate
19 concern at the time was the immediate stabilization of
20 the sediment that was put into the river. Kind of the
21 really up still to this point, the environmental
22 abatement activity that we've been doing is to number
23 one, stabilize and remove sediment from the river; and
24 then also remove it from nearby the river.

25 This particular area of the East

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1 Fork of Black River is known for flash floods. And so
2 as spring approaches, our main concern is getting the
3 additional sediment out of the way so when we get those
4 flash floods that we know are going to come, we don't
5 get additional sediment loading.

6 I wanted to give you an overview.
7 Basically as I said, we have an on-site coordinator,
8 which is a combination of our emergency environmental
9 response people and our parks people, which have been
10 overseeing this. Generally, just as a matter of
11 protocol, when EER -- they generally deal with
12 hazardous waste releases. But because this was an

13 environmentally emergency response, we felt that it was
14 most appropriate to use their services for this.

15 I think -- this has presented a
16 unique situation for the department because it is a
17 combination of Division of Environment Quality issues
18 because it is primarily a water quality issue. It is a
19 parks issue because we have massive destruction of a
20 state park. And it was an environmental emergency
21 response and continues to be, which regardless of where
22 in the state it would have been, I think our emergency
23 response would have been the same.

24 So we have several different
25 programs in the department that are involved in this

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1 project. I think our coordination internally has
2 worked out very well in putting together a group to
3 kind of oversee this as we go forward. But one thing
4 that EER does when they respond to any environmental
5 emergency is when they arrive on-site, they make an
6 immediate assessment of the situation. And they
7 determine is the responsible party able to do the
8 abatement or do they need to call -- they have a long
9 list of contractors that they take with them everywhere
10 they go, which can be called on immediate notice.

11 And if they make a determination,
12 for example, let's say a tanker spill, if there's not
13 sufficient resources on the scene to address that,
14 they'll call one of their contractors on their list and
15 they'll engage that. A -- they'll keep an oversight
16 responsibility, but our EER people don't actually go

17 out there and drive the backhoes and do the work.
18 They're doing the oversight. It's either the
19 responsible party or it somebody off the list of
20 contractors that does the work.

21 Ameren has been very cooperative in
22 abating the situation. And EER made the immediate
23 assessment that Ameren did have the resources to do the
24 work that we were going to order them to do. So
25 they've been doing the work with the assistance of

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1 MacTech. And I think they've also hired the Forester
2 Group. And I think they have several other
3 subcontractors.

4 The response -- we've given them
5 very short turnaround times on the three orders that
6 we've issued in addition to the letters we give them.
7 They've met every deadline and they've been responding
8 and done a very good job on that. They have between 60
9 and 70 people -- Ameren and MacTech do -- working
10 on-site every day, basically, from dawn to dusk.
11 There's an incredible, incredible amount of work going
12 on out there.

13 One thing that Randy would have
14 told you about and he'll tell you about next time,
15 there's a fen area, which is type of sensitive wetland
16 area that's actually in the park. For that particular
17 area we have demanded that all removal of sediment be
18 done by hand, which is extremely labor intensive. If
19 you've been down there you've seen them -- the areas
20 were quarantined off. And all that work is being done

25 And the sediment was so fine -- it's the colloidal

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1 clay, that it just wasn't settling out. We had asked
2 Ameren to do a feasibility study for flocculation of
3 the lower reservoir. They did that study. After some
4 back of forth we approved flocculation of the lower
5 reservoir. They used alum to settle it out, which
6 essentially releases the charge from the particles,
7 causes it to clump together and fall to the bottom.

8 That was pretty successful. Again,
9 Randy has the exact numbers, but we saw a dramatic drop
10 off in the turbidity numbers in the lower reservoir and
11 in the water being released below the reservoir after
12 that incident.

13 One thing we're going to have and
14 we've been telling people, especially down there who
15 see the river every day, is as activity goes on, you're
16 going to see some up and down. You're going -- it's
17 going to be clear for awhile. You're going to see some
18 cloudiness for awhile. Hopefully, after the
19 flocculation we won't see anything like the turbidity
20 numbers we saw before the flocculation. But we're
21 going to see some back and forth until we kind of get
22 farther down the road on resolving this.

23 We are constantly monitoring water
24 quality through the park, both immediately above the
25 park, the route and bridge, which is kind of the last

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1 area where it was undisturbed. Through the park, the
2 lower reservoir down to clear water, one thing we
3 ordered Ameren to do -- there was a series of USGS
4 monitoring stations that give you real-time data on the
5 internet, those were destroyed by the water that came
6 through there. Ameren, at our insistence, has
7 basically worked with USGS and they have gotten us back
8 online, so we get real-time data from those as well.
9 So we are monitoring that as we proceed.

10 I wanted to give you some numbers
11 too, just to give you the scope of the work that's
12 being done. As of last week, 9,514 loads of material
13 have been hauled away predominantly from the area
14 within the park. But I don't want to give the -- the
15 misimpression -- and this is an issue that the local
16 community down in Reynolds County has been very
17 sensitive too -- the work that we're doing in the park
18 is basically environmental stabilization work. And it
19 is to establish better water quality through the East
20 Fork and the Black River all the way down. So even
21 though there is a substantial amount of work going on
22 in the park, that is not park restoration work. That
23 is river stabilization work.

24 And so we have a significant amount
25 of work going on there. Down through the lower

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1 reservoir there is also a significant amount of work.
2 But generally in the park area itself, 9,514 loads of
3 material. That's 814 truckloads, dump truckloads of
4 mulch basically, that have been taken off site.

5 One thing that we've required
6 Ameren to do with all of these trees immediately is
7 basically grind them up and haul them off site because
8 there it really wasn't efficient to haul them off site
9 as trees. They brought in an enormous tub grinder,
10 which is about the size of half this room. And
11 literally they threw whole trees and stumps and
12 everything -- it grinds them up and shoots out a mulch.
13 It's much easier to transport.

14 They've hauled 814 truckloads of
15 that mulch off site. They've hauled 453 truckloads of
16 that mulch to our St. Joe State Park, which we are
17 using as a ground stabilization for some issues we have
18 at St. Joe State Park. They've hauled 1,936 truckloads
19 of rock; 4,498 truckloads of silt; 11 truckloads of
20 rebar.

21 One thing that you'll notice -- and
22 it really didn't show up in the picture, but if you go
23 down there, you have -- where the failure occurred, it
24 comes down the hill. And where it comes down and meets
25 the Black River is where we had what -- we call it the

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1 scour hole, which basically just washed out a big hole
2 and deposited a lot of those boulders there all the way
3 down to the campground, which is about a half a mile
4 down from there.

5 But everywhere you go there's just
6 rebar, and it's large diameter rebar in about 20-foot
7 lengths, just literally sticking up everywhere out of

8 the ground. And so one thing we've ordered them to do
9 is remove the rebar where possible. A lot of times
10 it's so embedded in the ground they simply have to take
11 a torch and cut it off, and that's what they're doing.
12 But they've hauled out 11 truckloads of rebar.

13 They've hauled out 1,748 truckloads
14 of trees, and that's in addition to the mulch. From
15 the fen area that I described, it's kind of divided
16 into two parts. There's a north fen and a south fen.
17 They've removed 683 truckloads of sediment from the
18 north fen and 182 truckloads from the south fen. And
19 those are big dump truckloads. And that's all the
20 material that's been removed by hand, which is a fairly
21 labor intensive activity.

22 COMMISSIONER PERRY: Does
23 environmental stabilization have to be done prior to
24 park restoration or can that be done concurrently?

25 MR. SCHAEFER: Well, it's --

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1 it's -- they're interconnected. Primarily to this
2 point, it's been -- the main concern has been
3 environmental stabilization, but where we can --
4 because obviously our priority is -- is the quality of
5 the river and the health of the river. But where we
6 can -- when we look at those decisions of how we're
7 going to remove something and where we're going to put
8 it and the way we're going to remove it, to the extent
9 we can, we try and take into consideration how that's
10 going to impact what we may want to do with the park
11 down the road.

12 You know, sometimes it just comes
13 down to you're going to have to move a pile over here
14 and six months from now when we get into more park
15 restoration, you may have to move it over there. And
16 if that's the case, that's the case. But we try and
17 avoid redundancy and additional expense wherever we
18 can. And so we try and take those things into
19 consideration.

20 The park planning is in the early
21 phases right now. As we've told people -- we've had
22 three public meetings so far, down in Lesterville.
23 We're trying to have them every month. That's kind of
24 on a status update of what we're doing mainly with the
25 river. As we get into the park development phase, as

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1 we've told the public, we do plan on having more
2 frequent meetings to involved the public on how that
3 park's going to be rebuilt.

4 Another thing -- you know, I wanted
5 Jim to give you an overview of the facility itself and
6 how it worked. One thing I want to point out is DNR
7 has no regulatory authority at this particular time
8 over that facility. That is a facility that's
9 regulated entirely by FERC, the Federal Energy
10 Regulatory Commission. They are essentially an entity
11 that regulates power generation from these federally
12 licensed power structures, but they do have an
13 engineering element that comes out and inspects these.

14 I believe the office that
15 inspected this particular facility was out of Chicago.

16 I think in the days to come, as the media has already
17 pointed out, there will be some issues in the
18 legislature on proposed changes to the dam safety law,
19 which will possibly give DNR a role in regulating such
20 facilities in the future.

21 COMMISSIONER EASLEY: Are there
22 plans to rebuild this dam?

23 MR. SCHAEFER: Ameren has not told
24 us of their plans. I mean, basically when I'm asked
25 that question, my perspective is I have no reason to

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1 believe that they're not going to rebuild that
2 facility, but I have never been told one way or the
3 other. So that's pretty much the way I look at it.

4 COMMISSIONER PERRY: Are there
5 other facilities like this in the state?

6 MR. SCHAEFER: I believe there are
7 three federal -- first of all, I don't believe there's
8 any facilities like this that are kind of this pump and
9 store. But as far as federally regulated dams, are
10 there three?

11 MR. ALEXANDER: There's five
12 federally reg-- FERC regulated dams in the state.
13 There's only one other pump storage facility in the
14 state, and that is Truman Dam. And it actually -- they
15 do reverse their generators there and pump using pumps
16 to pump water from the Lake of the Ozarks back up into
17 Truman reservoir, and it'll work in effect as a pump
18 storage facility. However, it has a tendency to kill a
19 large number of fish when they do that, so they don't

20 use it that much.

21 MR. SCHAEFER: When I say there's
22 three other federal facilities other than this one
23 because two of the five dams -- two of them are here at
24 this -- it's the upper reservoir and the lower
25 reservoir, so there's three others.

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1 CHAIRMAN HERRMANN: Jim, doesn't
2 Cannon Dam have a pump back capability?

3 MR. ALEXANDER: I'm not
4 aware if it does. I didn't -- I don't think --

5 CHAIRMAN HERRMANN : They have a
6 lower rereg pool below Cannon Dam.

7 MR. ALEXANDER: I'm not
8 aware --

9 MR. SCHAEFER: And Cannon Dam, if
10 I'm not mistaken, that is a CORE controlled dam.

11 MR. SCHAEFER: Right.
12 That's not --

13 MR. SCHAEFER: As opposed to a FERC
14 dam.

15 MR. ALEXANDER: Right.

16 CHAIRMAN HERRMANN: It is a CORE
17 facility.

18 MR. SCHAEFER: I don't know if you
19 have any other questions.

20 CHAIRMAN HERRMANN: Kurt, I thank
21 you. And thank Jim for the presentation. And we'll
22 look forward to the other half of the presentation and
23 we appreciate it. I guess, from everything that I read
24 and everything that I hear, I guess we should also

25 congratulate Ameren for accepting responsibility and

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1 the cooperation that they've given to the state and to
2 other agencies in trying to remediate and rectify the
3 damage that has been caused; is that right?

4 MR. SCHAEFER: Well, I think as I
5 said, kind of -- I personally divide this into two
6 issues; one is the cause, and one is everything that's
7 occurred after the incident. The cause is under
8 investigation. From my personal perspective, and I've
9 been involved with this every single day since this has
10 occurred, the response has been very good since the
11 incident. We've made a lot of demands on Ameren and we
12 haven't gotten a no to anything yet, so that has gone
13 very well.

14 As far as the investigation of the
15 cause, I think that's an issue that in time that will
16 probably be borne out by others. I did want to point
17 out as well again, pretty much everything that we're
18 doing at the site, we are doing under our authority
19 under 644, under the Clean Water Law. And I think
20 that's why it was imperative to give you all this
21 presentation of what's going on.

22 We have -- as of last week, we
23 issued a bill to Ameren for oversight costs for the
24 month of December. So that basically would have been
25 about two weeks. And it's a bill for about \$151,000.

1 And again, we are seeking the oversight cost and
2 investigation cost under 644, I believe it's 096. So
3 again, I wanted to keep the Commission aware that at
4 this point, pretty much all the authority that we're
5 exercising comes under 644 for this incident.

6 CHAIRMAN HERRMANN: All right.

7 MR. SCHAEFER: Okay.

8 CHAIRMAN HERRMANN: Thank you very
9 much.

10 MR. SCHAEFER: Thank you.

11 CHAIRMAN HERRMANN: Thank you, Jim.
12 Moving on to tab 4 in the agenda booklet, process for
13 the next 303(d) listing; Phil Schroeder.

14 MR. SCHROEDER: Thank you,
15 Mr. Chairman and good morning Commissioners.

16 CHAIRMAN HERRMANN: Good morning.

17 MR. SCHROEDER: I guess there's
18 little hope that I'll make this presentation any more
19 interesting than what Kurt and Jim just did for you,
20 but hopefully I'll be able to make it seem a lot less
21 tragic.

22 At the last Commission meeting we
23 had some good discussion about trying to establish a
24 path for doing our next 303(d) listing. And while we
25 were ready to present to the Clean Water Commission a

1 proposal for our next listing, we also recognize that
2 in that process, there were some concerns expressed
3 that might put us in some disparity with some recent

4 guidance that EPA has issued with respect to how to do
5 303(d) listings.

6 With that information the
7 Commission saw to it to direct staff to come back at
8 this meeting and present information that would
9 basically show them two scenarios, two potential
10 scenarios; one being that what would the list look like
11 if we just continued on the path that we're on in terms
12 of using the current methodology. What would that list
13 look like.

14 The second scenario would be if we
15 were to consider some of the concerns that we've been
16 relayed on the guidance methodology, what changes could
17 we propose to those-- to that methodology. And if we
18 did, what would be the potential changes to the list
19 itself, when we implemented some revisions to the
20 methodology.

21 Now, hopefully the information that
22 we've got in your packet will get you to that point
23 where you feel confident in directing to staff which
24 path to take on this issue because I think we're ready
25 to go either way and it's whatever way you direct.

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1 Our hope today is that you'll
2 direct staff to get back with our stakeholders and
3 finalize some revisions to the methodology so that we
4 have a better chance of coming up with a list that
5 would meet everybody's expectations, yours as well as
6 the public's, as well as EPA's. So in the end when we
7 finalize a list, there's going to be very little or few

8 changes made, if any, to that list when it's finalized.

9 If we were to be told or directed
10 by staff -- or Commission today to go ahead and make
11 some revisions to the methodology, what we intend to do
12 as prescribed by rule is open the revisions to public
13 comment, for a 60-day comment period, immediately
14 following this meeting. And for those two months we
15 would make whatever effort we feel is necessary to
16 fully discuss the concerns that still exist with the
17 methodology and come to some conclusion that would
18 bring us to the point where we could confidently come
19 back to the Commission and feel like we have at least a
20 large amount informed consent on how that methodology
21 should be structured.

22 Following that, the Commission
23 would give us a vote, I guess, on the methodology and
24 then we could proceed on actually dealing -- doing the
25 listing itself.

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1 Now, while we've presented to you,
2 in your packets, proposed listings for either using the
3 current methodology or following some provisions to the
4 methodology, those listings in your packet are meant
5 solely to help you gain a sense of what the list would
6 likely comprise in terms of the types of pollutants
7 that we're looking at, the type of data that we're
8 considering in listing waters, and the types of waters
9 that would be listed.

10 We aren't asking anybody at this
11 point to -- to do a full critique of those lists

12 because we think -- and we're promoting the fact that
13 we need to go back and look at the methodology first.
14 So again, at the end of this meeting what we're hoping
15 from the Commission is a directive to take what we're
16 suggesting in terms of revisions to the methodology to
17 your stakeholders for a 60-day process and then come
18 back at a June meeting, which would be a special
19 session.

20 We'd have to schedule this in
21 outside of the regular sessions already scheduled to be
22 able to stay on the time line that we presented to you
23 at the last commission meeting. At that time,
24 hopefully we'd be on the path of getting an emergency
25 rule making done on the methodology.

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1 With that, I'd like to just point
2 out a few items in the packet that I think are -- are
3 significant in trying to get a sense of where we're at.
4 If you'll look at the briefing paper, Page 225, it's
5 sort of Reader's Digest version of what we're proposing
6 to the Clean Water Commission. The first part of that
7 mentions Table 1, which is a list of the proposed 2004
8 303(d) list. These would be waters that would be
9 presented to the stakeholders if we were to use the
10 current methodology.

11 The bottom line on that issue is
12 that we would have 48 waters presented to the
13 stakeholders for consideration in the next 303(d) list.
14 That's a significantly less number than what's
15 currently on the 2002 list, which is around 200 waters.

16 The next table that's in your
17 packet is Table 2, would present to you the reasons
18 that we removed -- or the reasons why we're adding
19 those 48 waters to the 2004 list. Basically what the
20 48 waters consist of is 14 waters that were on the 2002
21 list that we think need to be carried forward into the
22 2004 list. And there'd be no changes whatsoever in
23 terms of which waters. Those would be the reasons for
24 their listing and such.

25 In addition there would be 17 new

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1 waters that were not on the 2002 list that additional
2 data that we've collected over time indicates that
3 there are impairments to those waters and we would
4 add -- want to add those back -- or add those to the
5 list.

6 And then there's 17 waters in which
7 we are revising, you know, the listing for. And that
8 would be doing such things as adding or subtracting
9 certain pollutants of concern. The pollutants that are
10 the cause for the impairment, if you will, and also in
11 some instances, adding some length or mileage to the
12 impaired segment.

13 If you look in your briefing packet
14 on Page 226, you'll see Chart B. This equates to sort
15 of an explanation of Table 3 in your packet, which
16 talks about the status of the waters in the 2002 303(d)
17 list, but were not proposed for the 2004 list. That
18 encompasses 175 waters that basically we're considering
19 removing from the listing based on a current

20 methodology.

21 If you look at that 175 listing,
22 you'll find that there's 85 of those that are involved
23 with situations that would basically not change based
24 on how we use the methodology. And those are waters
25 that are affected by water quality data that currently

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1 indicate based on new collection of data or review of
2 existing data, that now that water meets water quality
3 standards and is no longer considered impaired.

4 It would also involve those waters
5 which we feel are potentially impaired by a sole
6 source, a permitted source that can be resolved through
7 a permitting action. And so with -- under EPA guidance
8 it says that instead of putting those waters on the
9 303(d) list, when we get a permit action that resolves
10 the issue that satisfies the need for addressing the
11 impairment and therefore, there's no need to get on a
12 303(d) list, nor do a TMDL.

13 COMMISSIONER PERRY: Is that
14 number included, did you say, in the 85?

15 MR. SCHROEDER: It's included in
16 the 85 waters that we're removing from the 2002 list.
17 The third category, which amounts to 26 waters, are
18 waters that we have done total maximum daily loads on
19 since the last --

20 (End of Tape 1, Side B)

21 (Start of Tape 2, Side A)

22 MR. SCHROEDER: -- six waters that
23 total 85, the 26 waters being the one that's TMDL have
24 been approved for, we feel can be removed regardless of

25 whether or not we change the methodology or not.

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1 The other categories that make up
2 the 175 waters include assessment of the data itself.
3 In some points, we think the data is inconclusive. It
4 really doesn't have sufficient data points or sampling
5 or analysis to be able to make a reasonable conclusion
6 or the minimum data requirements have not been met.
7 There's not enough samples for the type of pollutant or
8 situation to be able to lead us to a conclusive
9 decision, or there's no data at all to support the
10 listing.

11 It may be in someone's observation
12 or opinion, about the water itself, there's no quality
13 assurance or quality control associated with the data
14 that was collected. Those types of things are the
15 subject of potential revisions to the methodology and
16 those are the kinds of things that in the revisions
17 that EPA have made in their guidance, would ask us to
18 go back and take a clearer look at some of these
19 reasons.

20 Now, some of these reasons may not
21 lead us in the end of actually changing the listing or
22 not, but I think that's where the key or most of the
23 discussions with stakeholders will rest in deciding
24 whether or not these waters should or shouldn't be on
25 the next 303(d) list.

3 waters to our stakeholders for discussion on whether or
4 not they should be on the next 303(d) list.

5 We presented in your packet a
6 number of recommended discussion points for revisions
7 to the methodology. I'm not really going to go into
8 those issues right now. Basically those revisions were
9 proposed based on what we have discussed with EPA in
10 terms of how data should be considered in making sure
11 that we only discount data that's not -- considered to
12 be not representative of the condition of the waters.

13 But certainly, if you have any
14 questions about what we're at least prepared to present
15 to our stakeholders, we'd be happy to answer -- try to
16 answer those questions. The -- those revisions are in
17 Appendix C that start on Page 235 of your packet.

18 With that, I'd like to talk a
19 little bit about the schedule that we're -- that's in
20 front of us. I said that if we get your directive to
21 begin looking at some of the revisions with our
22 stakeholders, we'd present the Tables 1 and 5 to our
23 stakeholders. We'd also present and discuss with them
24 the changes that your seeing proposed to the
25 methodology in here.

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1 The next meeting, already scheduled
2 with stakeholders on this topic is, March 15th. We're
3 planning to take this issue to them at that -- on that
4 day. If we need to have further meetings following
5 that one, or to feel confident that the 60-day period's
6 going to be sufficient to come to some reasonable
7 conclusion on what waters ought to be listed, we will.

11 the same streams. The six streams that are comprised
12 include the five streams for chlorides, which are no
13 longer listed in the -- in the final suggested list.

14 MR. SCHROEDER: I imagine that
15 there will be a lot of discussion with our
16 stakeholders. In fact, we had the opportunity to
17 already sort of present this information to our
18 stakeholders at an earlier meeting about two weeks ago
19 or so. And there were -- I mean the sense that we got
20 and basically the question that we tried to lay out is
21 that we understand that there's a lot of discussion
22 that needs to take place. And at the end of those
23 discussions, we're likely to see some different
24 listings, different proposed listings to go to the
25 Clean Water Commission.

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1 But what we wanted to know is, like
2 Chairman Herrmann just said is that we have the
3 sufficient reason and basis for putting that water on
4 the list. It's scientifically defensible. In other
5 words, the data can be scientifically supported to say
6 that it's reasonably representative of the condition of
7 the water.

8 I mean that's really the key of our
9 discussions with our stakeholders, is to make sure that
10 that happens by the time we come back in June and
11 present something. Well, not in June because that's
12 the methodology, but the end of the process when we
13 present a list that that's what we're presenting to the
14 Clean Water Commission.

15 COMMISSIONER PERRY: In those

16 cases where there is some concern as to the quality of
17 the data, will more data be taken?

18 MR. SCHROEDER: Well, one of the
19 things we're trying to do is move waters that the data
20 is conclusive, but -- or for other reasons may not be
21 reasonably represented at this time or scientifically
22 defensible, into a category where we can prioritize
23 those for further data collection and assessment if it
24 would indicate --

25 COMMISSIONER PERRY: That would

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1 be the 305 list or the --

2 MR. SCHROEDER: Yes.

3 COMMISSIONER PERRY: It is one of
4 those categories in the --

5 MR. SCHROEDER: That's correct.
6 You know, in and about the time that we presented
7 303(d) list, we should be presenting to the Commission
8 the 305(b) report to talk about what issues are facing
9 the rest of the waters that aren't on a 303(d) list,
10 but have concerns expressed about them. And if we have
11 indications, whatever that evidence would be, it just
12 doesn't -- it's not sufficient to get it on the list,
13 but indicates that there may be possible problems
14 there, then there should be some follow-up by the
15 department on those waters.

16 And what we need to do is be able
17 to -- with the resources we have, prioritize the right
18 ones to go back and do the monitoring and assessment

19 and make sure that those issues, those waters that may
20 be in trouble aren't lost.

21 CHAIRMAN HERRMANN: I'll go back
22 to my age old argument, which you've gotten tired of
23 hearing, but those waters where there might be concern,
24 where there is suspicion should be on the 305(b) list.
25 That's the reason for the 305(b) list. It's saying

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1 that these may be threatened, and need further study
2 to define it. So they're not going to be lost if they
3 don't appear on the 303(d) list, they're going to be on
4 a 305(b) list.

5 MR. SCHROEDER: Right. There's a
6 specific category in a 305(b) report --

7 CHAIRMAN HERRMANN: Yeah.

8 MR. SCHROEDER: -- that indicates
9 that further data analysis should be undertaken.

10 COMMISSIONER PERRY: Yeah. I
11 understand that and I thought these categories were
12 very clearly explained in the methodology that you gave
13 us. My concern is people thinking that we have a list
14 every two years. And a rush to produce the data that
15 may or may not be scientifically defensible to take
16 something that would otherwise be on the 305 list to
17 get it onto the 303(d) list. And how are we going to
18 handle that situation or prevent such a rush from
19 happening?

20 MR. SCHROEDER: One of the concepts
21 that we're trying to advance is that rather than
22 rushing to get water -- excuse me -- a water on the

23 303(d) list, whereby our priority is the development of
24 a TMDL. Let's get it into a category in a 305(b)
25 report, where the priority is -- excuse me -- to

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1 actually do more monitoring, more assessment, to be
2 able to fully better understand the condition of that
3 water, so that when steps are taken in terms of actions
4 of either issuing permits or working with non-point
5 sources and developmental watershed management plans
6 and things like that, that they're are very well
7 focused plans that are actually looking at an issue
8 that actually exists.

9 You know, I think our time is
10 better spent in a lot of situations looking at
11 improving our understanding of the water than trying to
12 draft a TMDL on a water we don't understand the true
13 conditions of.

14 COMMISSIONER PERRY: I completely
15 agree with that.

16 CHAIRMAN HERRMANN: That brings
17 me to the whole list of listings for mercury. And if I
18 remember from previous listings, if it was shown or
19 assumed that these were atmospheric depositions of
20 mercury in these streams, then you needn't -- we
21 needn't do a TMDL on those streams. Is that still the
22 case?

23 MR. SCHROEDER: Well, as you can
24 see we're recommending discussion on this topic in
25 terms of whether or not mercury and the data that

1 indicates mercury levels in fish tissues, is a
2 significant reason to place something on a 303(d) list
3 and go through the TMDL process.

4 So I guess my answer to you is, I
5 guess, it's somewhat undecided at this point. And
6 it's -- but it's certainly a topic for discussion in
7 our -- with our stakeholders as to whether or not it
8 should prevail, getting on the list.

9 CHAIRMAN HERRMANN: I thought
10 that was previous guidance, that we didn't have to do a
11 TMDL? Those went into a different category.

12 MR. SCHROEDER: Well, the different
13 categories are number one, if it's a permitted source,
14 which in this case it's not, it's probably deposition
15 like you said, and then we can't resolve that -- that
16 issue through a permitting action, so that category is
17 sort of out of the question.

18 The other category that might --
19 might work is if we had some other sufficient action
20 that would prove to EPA and the public that we have a plan
21 in place that has reasonable certainty of correcting
22 the problem. And most of those -- most of those plans
23 are integral parts of a TMDL, so I fail to see -- I
24 guess at this point -- although again I'd like to have
25 a discussion on the topic with you and the stakeholders

1 is to -- what other paths do we have? If we can't
2 address it through a permitting action, and we don't
3 have another plan in place to address mercury levels in

4 fish tissue, how else can we do it other than through a
5 TMDL?

6 CHAIRMAN HERRMANN: My memory of
7 previous activities was that EPA did not require a TMDL
8 if it can be shown that it was not a definite source,
9 but mercury -- but atmospheric deposition. I don't
10 have Alzheimer's yet. I can still remember that far
11 back.

12 MR. SCHROEDER: Well --

13 CHAIRMAN HERRMANN: I think that's
14 a point of discussion. One other point of discussion
15 is those five streams which previously were listed for
16 chlorides, which are now listed for PAH. And I'd like
17 to see the background information. I'm sure other
18 people will also want to see the background information
19 for that determination.

20 MR. SCHROEDER: Okay. Well, if
21 that's okay with you, we'll get that information
22 together for our March 15th meeting.

23 CHAIRMAN HERRMANN: Yes. Yeah.
24 Anything else for Phil? We have --

25 MR. GALBRAITH: Do we need

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1 a -- do we need an action on this?

2 MR. SCHROEDER: We would enjoy a
3 directive by the Clean Water Commission as to whether
4 or not we should proceed with the staff's
5 recommendation on this, and that is that we would
6 present some proposed revisions to our stakeholders to

7 the methodology at this point in time so that we can
8 fully understand what methodology should be used in
9 compiling our next 303(d) list.

10 CHAIRMAN HERRMANN: We have some
11 other people that would like to address this subject
12 and I think we'd like to hear from them before we go to
13 a motion, Phil. Thank you.

14 MR. GALBRAITH: Can I ask a
15 question as a point of order? Did the commenters, I
16 want to have a -- I want to get a decision on this from
17 the Commission and then I want to talk about another
18 aspect of this that the Commission asked us to look at
19 specifically what can -- what we might do legislatively
20 or through our regulations to shorten this process.
21 And I was going to say a few words and I know that some
22 of the commenters want to address that.

23 So if it's okay, unless -- unless
24 some of the commenters want to address what Phil
25 addressed right now, I'd like to go ahead and get the

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1 Commission's approval on the path forward and then get
2 into this other issue.

3 CHAIRMAN HERRMANN: I think other
4 commenters may want to address both, the path forward,
5 yes.

6 MR. GALBRAITH: Okay. And that's
7 fine.

8 CHAIRMAN HERRMANN: Okay. We have
9 a request from Leslie Holloway, Missouri Farm Bureau.

10 MS. HOLLOWAY: Thank you,

11 Mr. Chairman, members of the Commission. And my
12 comment is more specifically to the issue that Ed just
13 raised. I just wanted to state to the Commission that
14 there has been some discussion of a proposal to remove
15 the requirement from statute that the list go through
16 the rule-making process. And I had some concern
17 initially when I heard that proposal.

18 I've had subsequent discussions
19 regarding -- in that regard and I would just say that
20 it's not necessarily objectionable from our standpoint.
21 I would just submit to you that there are other ways to
22 address those timeliness issues. My understanding is
23 that neither the methodology nor the regulatory impact
24 report are required to go through the rule-making
25 process.

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1 And it is also my understanding
2 that EPA is willing to continue working with the State
3 as they have on the previous list to try to ensure that
4 our time line can be accommodated with deadline
5 extensions. I mean, not that there's any commitment in
6 that regard of course from EPA, but in my recent
7 discussions with EPA it my understanding that they are
8 not, at this point, coming down on the State in terms
9 of meeting specific deadline. And I just submit that
10 for the Commission's consideration. I'd be happy to
11 answer any questions.

12 CHAIRMAN HERRMANN: Thank you --

13 MS. HOLLOWAY: Thank you.

14 CHAIRMAN HERRMANN: -- Leslie.

15 Robert Brundage requests to address the Commission.

16 MR. BRUNDAGE: Good morning,
17 Mr. Chairman, members of the Commission. I -- before I
18 came up here I'm not even sure what I was going to say
19 exactly because this is a difficult issue. I've always
20 wanted to try to keep an open mind if the department
21 wants to continue to look at this with the stakeholders
22 for another 60 days. I supposed I'm game for a process
23 like that. However, as I testified at the last
24 Commission meeting, I -- I'm not convinced that we have
25 to go through the whole process to change our listing

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1 methodology just before we can get our 303(d) list out.

2 Sure the list may look differently,
3 but the list is done and it is submitted to EPA and
4 then EPA will do what they want to do with the list.
5 That's one way to look at it. Also regarding the
6 listing methodology and whether it goes through
7 rule-making, I think I would have an open mind on
8 whether or not the listing methodology does have to be
9 or should be in a regulation and should we consider
10 taking out of a regulation to give us more flexibility.

11 And lastly, again regarding the
12 listing methodology; I just want you all to know and I
13 think several of you may have participated in that
14 process. That was a long and difficult process and
15 took a lot of thought and input from people on -- where
16 we ended up on that listing methodology. And now
17 there's some pressure from EPA to change certain things
18 and we have the listing methodology the way we wanted

19 it here in Missouri.

20 And again, I'm always willing to
21 consider new and different ways to approach it to
22 change the -- to change it, but the memorandum in the
23 briefing document concerning the summary of the
24 conference call with EPA, and the way they looked at
25 things, and the way they were wanting certain

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1 changes -- I mean for the record, I just simply don't
2 agree with some of those things that they're saying.
3 And in the end, the stakeholders may not change the
4 listing methodology very much and it's just a difficult
5 process.

6 So I don't know if I've said
7 anything definitive right here or made anything more
8 clear for you, but I'll continue to work through the
9 process and would enjoy your thoughts about the future
10 listing methodology and whether it's in regulation and
11 those issues. So sorry I didn't have anything more
12 definitive to say.

13 CHAIRMAN HERRMANN: Thank you,
14 Robert. Any questions of Robert? We have a
15 non-definitive answer from Ken Midkiff, who checked
16 maybe on his card.

17 MR. MIDKIFF: I had to select
18 yes/no, so I put maybe. Actually I -- Ken Midkiff,
19 Sierra Club. I think that Phil has addressed my
20 concerns that this listing methodology and the proposed
21 list will go through a stakeholders meeting process and
22 so I'm satisfied with that, that we don't have to have

23 an arm wrestling fight at this meeting. Thank you.

24 CHAIRMAN HERRMANN: Thank you.

25 Okay. Mr. Director?

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1 MR. GALBRAITH: Would the
2 Commission care to -- do you want to hear my thoughts
3 on sorting the process or do you want to give us some
4 direction on this list and the path forward? What do
5 you want to do first?

6 CHAIRMAN HERRMANN: I'd like to
7 hear your thoughts.

8 MR. GALBRAITH: Okay. All right.
9 Do you have a slide show?

10 MR. GALBRAITH: Doing the
11 303(d) list in Missouri requires two rule-making
12 processes as you know. One rule-making, to do the
13 methodology and the second rule-making to do the list
14 itself. The authority or the requirement to do the
15 methodology as a rule is a decision that this
16 Commission can change. It's a -- it's actually a rule
17 that we have to do it as a rule, so as a state
18 regulation the Commission could change that.

19 The requirement to do the listing
20 as a rule is contained in state statute, so therefore
21 it would take an act of the General Assembly and the
22 consent of the Governor to change that. As I pointed
23 out last -- at our last meeting, we have basically 24
24 months between lists. Currently, we have basically 15
25 of those 24 months are spent basically waiting for EPA

1 to revise their listing methodology or provide guidance
2 to the State so the states can revise their
3 methodology.

4 Then we do a rule-making on the
5 methodology, which is another 15 to 16 months. And
6 then we do a rule-making on the listing, which is
7 another 15 months, so we're now 45 months to do a
8 24-month process.

9 If we were to change both the
10 requirement to do the methodology and the listing as a
11 rule, in other words, if the Commission were to change
12 its requirement and the General Assembly were to change
13 its requirement, we could conceivably spend six months
14 on the methodology and six months on the listing, plus
15 the 15 months for EPA and get this down to about a
16 27-month process, which I think EPA and everybody else
17 would find acceptable.

18 Where do I get six months from?
19 Basically it's -- it's kind of modeled on what were
20 doing with this methodology. Put it together, we bring
21 it to the Commission, we go back out for 60 or 90 days
22 of public comment, we bring it back to the Commission,
23 the Commission has certain rules that it has to abide
24 by. Basically a five to six month process for each of
25 the methodology and the listing.

1 It is true that the Commission
2 could change its requirement and the General Assembly

3 not change the requirement to do the listing as a rule.
4 That would still shorten the process. We could shave
5 off some months with EPA and I know that EPA is very,
6 you know, willing to work with us on time frames, but
7 the fact still is as long as we have to do either the
8 methodology or the listing as a rule, I think we're
9 still looking at a 35- 36-month process.

10 And I don't know that it -- how --
11 if we don't change both in the long run, how we're
12 going to get back to anything that is close to timely
13 in terms of doing the 303(d) list. There have been
14 some discussions and there is some language out there
15 that we have worked with some stakeholders to develop.
16 We have shared it and discussed it in the stake holder
17 meeting. I would not say that we got unanimous support
18 for that, but I think we had strong interest and some
19 support for it.

20 Basically what that statutory
21 language would do is require the department to publish
22 the list, 90 days public notice, and 90 day notice of a
23 public hearing. The department would have to present
24 its written response to comments, and it would prevent
25 the Commission from adding anything to the list that

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1 was not either proposed by the department initially, or
2 came through a recommendation -- a subsequent
3 recommendation of the department, or one of the
4 stakeholders.

5 So there's some -- so there -- the
6 point of the legislation is to have a public

7 participation process that has specific protections,
8 but is not a full rule-making process, so that you can
9 shorten that time frame. I can't comment on the status
10 of that legislation. I have no knowledge that that
11 will be filed any time soon. It's just out there.
12 It's for discussion, as Leslie pointed out.

13 So I would say though, at the very
14 least that the Commission needs to consider strongly,
15 changing the requirement to do the methodology as a
16 rule if we're serious about reducing the time it takes
17 to get a 303(d) list out. Questions?

18 COMMISSIONER PERRY: Do you
19 anticipate that the methodology would have to be
20 changed significantly on every cycle?

21 MR. GALBRAITH: I'm only
22 going by what I've experienced this year and what I
23 hear EPA saying that from list to list, they tend to
24 look at the State's lists and they look at what they
25 feel are gaps. And so they revise their guidance to

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1 close those gaps. So I -- that may not be right.
2 Okay. Or that may not prove to be what happens in the
3 future, but it's my -- based on what I've observed, I
4 think we have to plan for it today.

5 CHAIRMAN HERRMANN: That was my
6 question. If normally the guidance, the EPA guidance
7 changes significantly, that should -- these events
8 should all be additive rather than perhaps concurrent.

9 MR. GALBRAITH: I think they
10 are additive.

11 CHAIRMAN HERRMANN: Well they
12 are -- by your presentation, yes, and presently they
13 are. But my question is: Does EPA change their
14 guidance significantly enough that some activities can
15 be concurrent?

16 MR. GALBRAITH: Well,
17 certainly we would hope that we could be working with
18 EPA in the months leading up to when they publish their
19 guidance to kind of get a peak behind the curtain
20 and -- and so we would have a head start.

21 CHAIRMAN HERRMANN: Yes.

22 MR. GALBRAITH: But I
23 don't -- I can't -- I can't say for certain whether
24 that will occur or not.

25 CHAIRMAN HERRMANN: Well, your

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1 request is that the Commission consider doing the
2 methodology and the listing --

3 MR. GALBRAITH: Well, the
4 Commission only can consider whether to do the
5 methodology as a rule or not. Now, if the Commission
6 wanted to go on record in support of some change in
7 legislation, they can do that, but you really only have
8 jurisdiction over the -- over the methodology. And
9 yes, I think you should consider changing that so that
10 we can shorten the process at least that much.

11 CHAIRMAN HERRMANN: Okay. Any
12 discussion or argument or first do we need a motion?

13 MR. GALBRAITH: And I didn't really

14 queue it up as a -- I mean, it's not my expectation
15 today that the Commission give me some direction. I
16 just really wanted to make sure that we are educated on
17 this. Perhaps if it would be the Commission's desire,
18 we could propose an action item for our May meeting, so
19 that you're more prepared to make a motion like that.

20 COMMISSIONER PERRY: You want a
21 motion so that this can be discussed?

22 CHAIRMAN HERRMANN: Yeah. That the
23 department pursue the opportunities to do methodology,
24 other than by rule.

25 COMMISSIONER PERRY: Okay.

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1 CHAIRMAN HERRMANN: Also to
2 investigate the possible future production of the
3 listing other than rule-making. Is that --

4 MR. GALBRAITH: Yeah. And
5 in fact, it would actually take a rule-making to change
6 the method. So if you wanted to direct the department
7 to come to you with a draft rule-making on the
8 methodology to unreverse or to take that out of rule --

9 CHAIRMAN HERRMANN: Okay.

10 MR. GALBRAITH: -- it would
11 be required as a rule. That would be an appropriate
12 motion.

13 COMMISSIONER PERRY: I make that
14 motion on what the Chairman said, and add to it that we
15 would like a proposed rule, proposed rule to undo the
16 ruling, supposed. That is from staff.

17 MR. GALBRAITH: I follow
18 you.

19 CHAIRMAN HERRMANN: Okay.
20 COMMISSIONER EASLEY: Second.
21 CHAIRMAN HERRMANN: Moved and
22 seconded. Any discussion? Would you please call for
23 the vote Malinda?
24 MS. OVERHOFF: Commissioner Kelly?
25 MS. KELLY: Yes.

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1 MS. OVERHOFF: Commissioner Perry?
2 MS. PERRY: Yes.
3 MS. OVERHOFF: Commissioner
4 Hardecke?
5 MR. HARDECKE: Yes.
6 MS. OVERHOFF: Commissioner Easley?
7 MR. EASLEY: Yes.
8 MS. OVERHOFF: Chairman Herrmann?
9 CHAIRMAN HERRMANN: Yes.
10 COMMISSIONER PERRY: May I ask a
11 question, though? The regulatory impact report, does
12 that just go kind of concurrently with the methodology?
13 MR. GALBRAITH: If we --
14 under current regulation, yes. We would do -- we would
15 do a regulatory impact report before -- under ordinary
16 rule-making procedures, we would do and RIR before we
17 brought the rule actually forward for proposal, so it
18 precedes that. And the same with the listing.
19 Now, I think we still would like
20 some direction from you, as far as Phil's presentation
21 and proposal, whether to proceed as we've outlined on

22 the current listing methodology.

23 CHAIRMAN HERRMANN: Would you
24 restate your suggestion?

25 COMMISSIONER PERRY: You mean on

1 the methodology --

2 MR. GALBRAITH: Basically -yeah-

3 COMMISSIONER PERRY: -- current
4 listing, if you want us to proceed with the idea of
5 doing the listing, having --

6 MR. GALBRAITH: Basically
7 the schedule on Page 267, the path forward. We would
8 like your -- at least your ascent. I don't know if you
9 need to vote on it, but at least your ascent that we
10 take the draft methodology to a stakeholder group for
11 60 days and bring a rule-making back to you on -- yes.

12 COMMISSIONER PERRY: Okay. This
13 is the schedule that you proposed?

14 MR. GALBRAITH: Correct.

15 COMMISSIONER PERRY: Do we need
16 any sort of motion regarding whether or not we want to
17 proceed with encouraging that rule-making be removed
18 for the listing methodology? And does this assume
19 that?

20 MR. GALBRAITH: No. We
21 just -- you just told me to bring your rule-making to
22 remove the listing methodology from rule. That's what
23 you just voted on.

24 COMMISSIONER PERRY: Right.

25 MR. GALBRAITH: Okay.

1 COMMISSIONER PERRY: Okay. And
2 then the listing. Not the --

3 MR. GALBRAITH: The
4 listing --

5 COMMISSIONER PERRY: --
6 methodology, but of the --

7 MR. GALBRAITH: Okay. I
8 thought you said methodology. I'm sorry.

9 COMMISSIONER PERRY: I did.
10 Sorry.

11 MR. GALBRAITH: You can --
12 okay. If you want to make a motion in support of that,
13 but it would take an act of -- you know, it would take
14 the legislation to change that.

15 COMMISSIONER PERRY: I completely
16 understand that.

17 MR. GALBRAITH: Okay. Yeah.
18 That's certainly -- that's certainly -- I think it
19 would be a good thing to do. I don't know if there's
20 others here who might feel differently.

21 COMMISSIONER PERRY: Well, would
22 that not effect --

23 UNIDENTIFIED SPEAKER: Won't effect
24 that at all. This schedule -- this schedule is status
25 quo. We're just dealing within the regulatory and

1 statutory framework that we have today. So anything --

2 you know voting on that won't -- you know, unless
3 the -- unless the -- unless the statute got changed and
4 there was an emergency provision and it got, you
5 know -- by some miracle it got changed and, you know, a
6 month from now -- yeah. We could --

7 COMMISSIONER PERRY: It could
8 actually shorten these times?

9 MR. GALBRAITH: It could
10 actually shorten those, yeah.

11 COMMISSIONER PERRY: But in the
12 meantime, we need some plan of action and this looks to
13 me to be a good one.

14 MR. GALBRAITH: I think so.

15 COMMISSIONER PERRY: So I make
16 the motion that we approve this list critical path, as
17 you've named it.

18 COMMISSIONER KELLY: Second the
19 motion.

20 CHAIRMAN HERRMANN: Is there a
21 second?

22 COMMISSIONER KELLY: Second.

23 CHAIRMAN HERRMANN: Moved and
24 seconded. Any discussion? Hearing none, the motion
25 passed. That's your guidance.

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1 MR. GALBRAITH: Okay. Thank
2 you.

3 CHAIRMAN HERRMANN: Okay. Thank
4 you.

5 COMMISSIONER PERRY: You have to

6 encourage that they then also investigate doing that
7 true list, not --

8 CHAIRMAN HERRMANN: Yes. That was
9 in the original -- the first (inaudible).

10 COMMISSIONER PERRY: Okay.

11 CHAIRMAN HERRMANN: Now we're going
12 to move to variances. And I guess I have an
13 introduction to that and ask in the last -- going
14 through my minutes and notes of last meeting in
15 January, we had an approval of variance advertising for
16 the village of Baring. How come they don't have
17 that in there?

18 MR. LAUX: I can take that --

19 MR. GALBRAITH: Richard can
20 answer that.

21 MR. LAUX: Basically, we did the
22 public notice. And the mailing date when comments can
23 be received is tomorrow afternoon, five o'clock in our
24 office, so technically the public period isn't
25 completed yet, so we're going to bring that to you at

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1 the May meeting.

2 MR. GALBRAITH: Have we
3 talked to Baring? Are they aware of this and --

4 MR. LAUX: Yes.

5 MR. GALBRAITH: -- okay
6 which that?

7 MR. LAUX: Talked to their
8 consultant and they indicated it would be okay to wait
9 till then. Essentially because February is a short

10 month, we did the public notice when we normally would,
11 and that would have ended you know, yesterday. But
12 because it was a short month, it doesn't end
13 technically until tomorrow. We could have brought it
14 with you -- you know, to you and had your vote, but if
15 we got any comments we'd have to bring it back next
16 commission meeting anyhow, so we are just going to wait
17 till the meeting.

18 CHAIRMAN HERRMANN: Have we had any
19 comments?

20 MR. LAUX: Not so far.

21 CHAIRMAN HERRMANN: Okay.

22 COMMISSIONER PERRY: But we
23 really can't take action until that closes. Right?

24 CHAIRMAN HERRMANN: I guess we'll
25 move to tab 5, Festus/Crystal City variance request.

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1 Richard?

2 MR. LAUX: Basically the joint
3 Sewer Commission of the two cities, Festus and Crystal
4 City, have requested a variance on the requirement of
5 the permit that -- to build a pipeline to the river
6 from -- to the Missouri -- or Mississippi River,
7 rather, rather than discharge through the nearby creek.

8 The requirement for a pipeline was
9 contained in the Section 208 plan for the St. Louis
10 area. It indicated that this particular discharge as
11 well as some others, would be redirected to the
12 Mississippi River. Our regulations require that staff
13 issue permits that are consistent with 208 plans,

14 so the requirement to build a pipeline has been in the
15 city's permit for some time.

16 You may remember five years ago
17 it's implementation was delayed through a earlier
18 variance. So they're back, basically asking to
19 continue with some time to investigate change in the
20 208 plan, and to provide disinfection to protect the
21 nearby Platten Creek. So we're recommending
22 preliminary approval of the request with several
23 conditions that are in the staff recommendation and the
24 inclusion of the operating permit on the in-stream
25 monitoring.

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1 CHAIRMAN HERRMANN: I brought with
2 me my agenda booklets from January and May of 2001.
3 And the reason given for the variance was that the Corp
4 of Engineers had not yet finalized the Levy location
5 and the Levy particulars so that the city could not
6 proceed with their outfall at that time. And that's
7 the reason that a five-year variance was granted in
8 2001.

9 Since that time, or even before and
10 continuing today MSD can build about a two-and-a-half
11 mile outfall from Cold Water Creek plant to the
12 Missouri River. They are in the process of a
13 \$236,000,000 treatment plant and tunnel to take a
14 couple of other facilities out of the Meramec River.
15 Eventually, that will include an additional five-mile
16 tunnel or six-mile tunnel up to Fenton, and eliminate
17 that lagoon and up to the Grand Glaze plant, and

22 grant folks speaking. The permit folks haven't weighed
23 in on it yet.

24 My guess is that we may be able to
25 entertain -- the construction grant people were very

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1 clear, you can change the State's 208 plan anytime you
2 want. I pointed out that our rules don't have any
3 references to 208 plans or the requirement to produce
4 any, those were all federal requirements. But being as
5 there is no current staff and funding to do anything
6 with that particular program.

7 Construction grants people think
8 it's pretty much dead, and that the states are free to
9 change those kinds of plans. I'm not sure what the
10 permitting folks are going to say. But on the other
11 hand, it seemed reasonable that -- to staff, to give
12 them a fairly lengthy period of time to actually
13 investigate whether this is rule-making at the state
14 level that they need; whether just EPA would ignore
15 permit actions that seem to conflict with the 208 plan;
16 or just how really to address this, both federally and
17 as well as our state rules, which seem pretty clear,
18 the 208 plans to be followed.

19 CHAIRMAN HERRMANN: The 208 plan
20 was done for east/west gateway planning -- east/west
21 gateway counsel, which was the metropolitan planning
22 agency who, through EPA, produced the 208 document.
23 The 208 document complies with the Federal Clean Water
24 Act, Section 208, and was accepted and approved by EPA.
25 I'm saying that in my mind I would like to have

1 something written from EPA that says, okay, you can
2 change it or you can ignore it or whatever you can do.
3 Because I find no provision in the Clean Water Act,
4 which says -- the Federal Clean Water Act, which says
5 how you change the 208 plan.

6 MR. LAUX: According to the Region
7 7 folks, that should be in state rules; and it's, of
8 course, not in our rules.

9 CHAIRMAN HERRMANN: No. Your state
10 rules say that we will comply with provisions --

11 MR. LAUX: Right.

12 CHAIRMAN HERRMANN: -- of the
13 Federal Clean Water Act. That's enough for me.

14 COMMISSIONER PERRY: Do we not
15 need a legal determination on whether or not we have
16 this authority to grant such a variance?

17 CHAIRMAN HERRMANN: Yeah. That's
18 what I'm asking them to produce from EPA in my mind.
19 Now, I -- there's four other people who have to concur
20 with my mind.

21 I would suggest to the Commission
22 that perhaps at the -- this is March, April, May -- at
23 the May -- what, May 4 --

24 COMMISSIONER PERRY: Would that
25 be the 60 days that you proposed?

1 CHAIRMAN HERRMANN: Yeah. At the
2 May meeting, that they come back with something from
3 EPA which says --

4 COMMISSIONER PERRY: That we can
5 approve such --

6 CHAIRMAN HERRMANN: -- that we
7 can -- we can approve a change, we can deviate from it,
8 we can change it, we can ignore it, whatever we can do
9 to comply with the request, or disapprove the request,
10 whichever it may be.

11 COMMISSIONER PERRY: Okay. I
12 move that we give staff 60 days to that May meeting to
13 investigate whether we have the authority to grant such
14 a variance to 208 plan.

15 CHAIRMAN HERRMANN: Might I suggest
16 staff be in concurrence or together with the applicant.

17 COMMISSIONER PERRY: So I amend
18 that motion to include both staff and the applicant.

19 CHAIRMAN HERRMANN: John, do you
20 have something to add?

21 MR. YOUNG: Yeah. If I could just
22 a moment. I'm John Young and I'm actually representing
23 Festus/Crystal City. We work with the staff on this.
24 These may be very good questions, Mr. Chairman. I
25 guess the perspective that Festus/Crystal City has is

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1 that they are meeting the water quality standards for
2 Platten Creek, anticipate meeting those when the permit
3 is renewed with the exception of the disinfection
4 requirements, which they have an estimate in the
5 package they sent in. So they basically will meet all

6 of the water quality standards.

7 You suggested that they -- the
8 reasons -- which I didn't realize their reasons were
9 related to the Corp of Engineers, but what they've --
10 the new situation, if you will, is that the treatment
11 plant is doing an excellent job reducing the ammonia to
12 probably somewhere in the 10 percent of the -- 10 to 20
13 percent of the standard that's required in the permit.
14 And they're meeting water quality standards.

15 I think it's a reasonable request
16 on part of Festus/Crystal City in the last -- this
17 community, I think, in the range of 15 to 20,000
18 people. They spent nearly 30 million dollars in the
19 last six or seven years related to building the levy to
20 protect the treatment plant, building a treatment
21 plant, and building a water treatment plant.

22 I realize drinking water is not
23 your necessarily bailiwick, but it's still money. And
24 what we're trying to here is ask if we can spend about
25 1.9 million dollars instead of about 7 million, 6.9

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1 million -- those were estimates that were in the
2 package -- to meet the water quality standards and then
3 work with EPA to see if that 208 plan can be amended,
4 or if you would be willing to change the rule in such a
5 way that you can make an exception if water quality
6 standards are being met, so those are our arguments.

7 It's about a 9,000 foot pipeline
8 that would be somewhere between 8 and 9,500 -- 8,000 -
9 9,500 it will have to go through one area that's

10 designated as a hazardous waste sight, an old PPG
11 facility. And there's a number of unknown issues. And
12 our opinion about the route and how much time it would
13 take in addition to the money. So we're --

14 (End of Tape 2, Side 1)

15 (Start Tape 2, Side 2)

16 MR. YOUNG: -- I like to
17 not have to spend that much money to simply take the
18 discharge from the point it is now out to the
19 Mississippi River.

20 COMMISSIONER PERRY: Okay. I
21 don't have an argument with the merits of the variance,
22 which is what I think you are arguing. Our concern is
23 whether or not we have the authority to grant a
24 variance on these Section 208 plans. Is the 60 days
25 that we proposed to find out whether or not we can even

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1 take this action going to harm you?

2 MR. YOUNG: It could
3 from this perspective. We have a deadline or -- I
4 believe it's May 23rd, and 60 days from now would put
5 us in a position to absolutely not be in compliance
6 with the permit that's now in place on May 24th, if
7 that's the right date. So we would be in violation of
8 the permit and that's why we're here now versus later.

9 COMMISSIONER PERRY: And actually
10 what we're looking for is some sort of legal
11 determination on this.

12 CHAIRMAN HERRMANN: That's
13 right.

14 COMMISSIONER PERRY: Okay. So
15 may I ask all people involved if 30 days would bring us
16 an answer. And perhaps if we have to rule on this
17 variance by conference call.

18 CHAIRMAN HERRMANN: The only
19 variance that the city or the sewer -- sewage agency
20 has to date, John, is the variance to build the outfall
21 to the river.

22 MR. YOUNG: Right.

23 CHAIRMAN HERRMANN: That's the
24 only -- only thing in the variance.

25 MR. YOUNG: Right. That's correct.

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1 It's --

2 CHAIRMAN HERRMANN: So we --

3 MR. YOUNG: And in the application
4 we -- we basically say we understand that disinfection
5 is required and that is part of the -- I think that's
6 part of the condition.

7 CHAIRMAN HERRMANN: Disinfection is
8 required if you discharge to Platten Creek because --

9 MR. YOUNG: Right.

10 CHAIRMAN HERRMANN: -- it is a
11 whole body contact stream.

12 MR. YOUNG: Right. Correct.

13 CHAIRMAN HERRMANN: But
14 disinfection --

15 COMMISSIONER PERRY: Would not be
16 required.

17 CHAIRMAN HERRMANN: Would not be

18 required if you went to the Mississippi River.

19 COMMISSIONER PERRY: That's the
20 issue, is it not?

21 MR. YOUNG: And I guess my -- the
22 city's position right now is they'd prefer to spend 2
23 million versus 7 million.

24 COMMISSIONER PERRY: Sure. And
25 that gets --

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1 MR. YOUNG: But disinfection
2 versus --

3 COMMISSIONER PERRY: And that
4 again gets us back to the merits of the variance
5 itself.

6 CHAIRMAN HERRMANN: Yeah. The
7 only --

8 COMMISSIONER PERRY: My question
9 is can we find out in 30 days whether or not we can
10 grant such a variance?

11 CHAIRMAN HERRMANN: We're not going
12 to have a meeting in 30 days. We will have a meeting
13 in 60 days.

14 MR. YOUNG: If I could
15 make a comment, I think you obviously have the ability
16 to grant a variance. The question of whether EPA will
17 allow a change in 208 plan is the question in my mind. And we
18 don't know that answer for sure. We were asking for
19 time to figure that out.

20 CHAIRMAN HERRMANN: That's why --
21 yeah. You're asking for 48 months --

22 MR. YOUNG: Right.

23 That's correct.

24 CHAIRMAN HERRMANN: -- to figure
25 that out. And I --

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1 MR. YOUNG: And it may
2 be figured out sooner than that, but frankly as Richard
3 has told me in the past and mentioned today, EPA is
4 no longer focused on those plans and don't have people
5 up to speed. So I don't know if that's a simple matter
6 of calling the general counsel at EPA and getting a
7 response, or if that's a convoluted thing that may have
8 to go to Washington, D.C. and back out or something
9 like that. I don't know.

10 CHAIRMAN HERRMANN: Where's John
11 Delashmit John, to whom would -- to whom would
12 such a investigative request go in EPA?

13 MR. DELASHMIT: Who I'd start with
14 would be our acting legal counsel, who's David Cozad
15 (.

16 CHAIRMAN HERRMANN: Okay. So there
17 is somebody available and -- and on-hand to render an
18 opinion or --

19 MR. DELASHMIT: Well, if they
20 couldn't render that opinion, they could certainly find
21 somebody in Washington to do it.

22 CHAIRMAN HERRMANN: Right. Right.

23 COMMISSIONER KELLY: Would it be
24 possible to go ahead and grant preliminary approval of
25 the variance and have that to amend for instance, a

1 motion and have those things go on --

2 COMMISSIONER PERRY: Are you
3 saying like ?

4 COMMISSIONER KELLY: Yeah.
5 Because -- well, because it wouldn't get final approval
6 until May in any case, and in the meantime --

7 CHAIRMAN HERRMANN: Well, I think
8 we'd be back in the same pot that we're in right now
9 and that is that if people have a memory long enough to
10 remember back to 2001, to the January and May meetings
11 of 2001, why the variance was granted in the first
12 place.

13 COMMISSIONER PERRY: That's a
14 very different purpose.

15 CHAIRMAN HERRMANN: And if we
16 approve a preliminary advertising, I think we may
17 forget the origin of the original question. I --

18 MR. GALBRAITH: John, you
19 said -- if I may, Mr. Chairman?

20 CHAIRMAN HERRMANN: Yes.

21 MR. GALBRAITH: You said
22 that you have a compliance date of May 23rd or 24th?

23 MR. YOUNG: I think it's -- that's
24 about right, yes.

25 MR. GALBRAITH: If our

1 meeting is on May 3rd, and we do as the Chairman
2 suggests and we're able to come back and resolve this,
3 that would still -- are you saying that wouldn't give
4 you enough time to -- to do what you need to do to be
5 in compliance by the 24th; is that --

6 MR. YOUNG: I'm not sure I
7 understand --

8 MR. GALBRAITH: Well,
9 I've -- you stated that the problem was that you had an
10 issue with the 60-day -- taking this up in May because
11 you had a compliance, but if this is taken up at May
12 3rd, your compliance date isn't till later in that
13 month.

14 MR. YOUNG: Well, there's 20 days
15 there difference, yeah.

16 MR. GALBRAITH: Okay.

17 CHAIRMAN HERRMANN: Yeah. I don't
18 think you'll install disinfection or -- or outfall to
19 the river in 20 days.

20 MR. YOUNG: No, we won't. That's a
21 certainty that neither of those things will occur in --

22 CHAIRMAN HERRMANN: Right.

23 MR. YOUNG: -- between now and May
24 23rd.

25 CHAIRMAN HERRMANN: So the variance

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1 would no longer be in effect, that the city or the
2 agency had been granted is the variance to build the
3 outfall?

4 MR. YOUNG: The

5 pipeline. Right.

6 CHAIRMAN HERRMANN: That's the only
7 thing that you would be in --

8 MR. YOUNG: That's
9 correct.

10 CHAIRMAN HERRMANN: -- violation
11 of?

12 MR. YOUNG: That's
13 correct. I just want to point out that's the problem,
14 though --

15 CHAIRMAN HERRMANN: Yeah.

16 MR. YOUNG: -- I think
17 that the city sees, as they don't want to be in
18 violation of that permit. And this is kind of the
19 critical path that I worked on the staff with. You
20 would look at it this meeting, possibly put it on
21 public notice and then make the final decision at the
22 May meeting. That's why we're here today.

23 CHAIRMAN HERRMANN: I think if --
24 if the agency perhaps through you or whomever, in
25 concert with the staff, whomever Ed would designate,

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1 would approach EPA, perhaps through Region 7 for a
2 determination, I think in May we can make a yes or no.

3 COMMISSIONER PERRY: Okay. May
4 we can make yes or no, if we don't say okay today, we
5 can't say yes or no in May because of the notice
6 requirement. We will find out as Cosette stated,
7 whether or not EPA says we can do this by then. So if
8 we put it on public notice, we still have the

9 opportunity in May to say nope, sorry. We can't do
10 this.

11 MR. YOUNG: I agree.

12 COMMISSIONER PERRY: So can I
13 amend my motion --

14 CHAIRMAN HERRMANN: That's your
15 prerogative.

16 COMMISSIONER PERRY: Or I guess I
17 can withdraw my motion. Can't I? Do I have to --

18 CHAIRMAN HERRMANN: If you get a
19 second.

20 COMMISSIONER KELLY: Unless you
21 still want to -- or I can defeat it -- have him look
22 into the matter.

23 COMMISSIONER PERRY: Well
24 obviously, I still want to still look into the matter.
25 What I think I don't want to do now is delay our vote

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1 today on the variance.

2 COMMISSIONER KELLY: Why don't
3 you just add that to the conditions that are on there?

4 COMMISSIONER EASLEY: Well, can
5 you start the public notice process now so that would
6 be completed by the next meeting?

7 COMMISSIONER PERRY: We can if we
8 approve the variance.

9 CHAIRMAN HERRMANN: Yeah. Who was
10 the second on your motion?

11 COMMISSIONER PERRY: Were you the
12 second?

13 COMMISSIONER KELLY: I think so.
14 I don't --
15 COMMISSIONER EASLEY: What was the
16 motion?
17 CHAIRMAN HERRMANN: You can
18 withdraw your second and she withdraws the motion, she
19 can rephrase it.
20 COMMISSIONER PERRY: Okay. I
21 withdraw my motion.
22 COMMISSIONER KELLY: I withdraw
23 my second.
24 COMMISSIONER PERRY: I would like
25 to make a new motion that we approve the variance

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1 request so that this can be put up for public notice,
2 but also realizing that in that time, we will find out
3 whether or not we have the authority to approve such a
4 request.
5 COMMISSIONER KELLY: I second the
6 motion.
7 CHAIRMAN HERRMANN: Okay. For sake
8 of argument, I might suggest that we're not approving
9 the variance, but we're approving the advertising.
10 COMMISSIONER KELLY: Would that
11 invalidate the approval in May?
12 CHAIRMAN HERRMANN: No. I don't
13 think so.
14 COMMISSIONER PERRY: Well, are we
15 not publicizing that we have the intent to approve the
16 variance?

17 MR. LAUX: I think we can probably
18 word the public notice such that you have directed
19 staff to investigate Your legal authority and that
20 you've taken a preliminary action to approve it
21 contingent upon having the authority to approve it.

22 CHAIRMAN HERRMANN: Okay.
23 That's --

24 MR. LAUX: We can put
25 that in the public notice.

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1 COMMISSIONER PERRY: And I think
2 that was the gist of my motion.

3 CHAIRMAN HERRMANN: Okay.

4 COMMISSIONER PERRY: So can I
5 modify it?

6 CHAIRMAN HERRMANN: Well --

7 COMMISSIONER PERRY: A motion to
8 modify it in those terms.

9 CHAIRMAN HERRMANN: Your adopting
10 Richard's words. Right?

11 COMMISSIONER PERRY: I am
12 adopting Richard's words.

13 CHAIRMAN HERRMANN: Okay. Okay.

14 COMMISSIONER EASLEY: Well, I
15 second your motion to your modification of your
16 modification.

17 COMMISSIONER PERRY: Thank you.

18 CHAIRMAN HERRMANN: Any other
19 discussion? Hearing none, I think we ought to call for
20 a vote on this one. Call for a vote Malinda, please.

21 MS. OVERHOFF: Commi ssi oner Perry?
22 MS. PERRY: Yes.
23 MS. OVERHOFF: Commi ssi oner
24 Hardecke?
25 MR. HARDECKE: Yes.

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1 MS. OVERHOFF: Commi ssi oner Easl ey?
2 MR. EASLEY: Yes.
3 MS. OVERHOFF: Commi ssi oner Kel ly?
4 MS. KELLY: Yes.
5 MS. OVERHOFF: Chai rman HERRMANN?
6 CHAI RMAN HERRMANN: Yes. I --
7 Richard, I'd like to make it clear that I'd like to
8 have something back from EPA in writing.
9 MR. LAUX: I'll see what we can do.
10 I've gotten a few emails. I don't think they're --
11 CHAI RMAN HERRMANN: Well --
12 MR. LAUX: -- hesi tant to talk
13 about it.
14 CHAI RMAN HERRMANN: -- email or
15 whatever.
16 MR. LAUX: We probabl y need
17 something ki nd of formal from an attorney.
18 CHAI RMAN HERRMANN: Yeah. Yeah.
19 CHAI RMAN HERRMANN: Rather than he
20 sai d/she sai d.
21 MR. LAUX: Ri ght.
22 CHAI RMAN HERRMANN: Thank you.
23 Thank you, John.
24 MR. YOUNG: Thank you.

1 be a motion out our geezoos?

2 CHAIRMAN HERRMANN: Uh?

3 COMMISSIONER PERRY: Would this
4 be a motion out our geezoos?

5 CHAIRMAN HERRMANN: Yeah. We've
6 motioned enough. The only cost figures that I got,
7 John, just to beat the horse while he's laying there
8 dead -- the only cost figures that I got were the 236
9 million that was sited in our tour two months ago of
10 the MSD Lower Meramec facilities. But there is quite a
11 few other dollars spent at Cold Water Creek and the
12 City of Arnold, and Rock Creek and other areas, so the
13 matter of cost is not necessarily a good argument.

14 Okay. Moving down to enforcement;
15 let me get into those.

16 COMMISSIONER PERRY: Are you
17 aware that it's five till 12:00, Mr. Chairman?

18 CHAIRMAN HERRMANN: Yeah. That's
19 what I was just asking our director for direction.

20 MR. GALBRAITH: As far as I
21 know, lunch is not here yet. So if you -- I'm sure
22 we've got a -- I'm sure it will be here soon, so it's
23 up to you.

24 CHAIRMAN HERRMANN: Okay. If we
25 can -- we've got a number of them. Kevin?

1 MR. MOHAMMADI: Good morning,
2 Mr. Chairman and --

3 CHAIRMAN HERRMANN: Good morning.

4 MR. MOHAMMADI: -- members of the
5 Commission. Under tab 6 in your packet, you will find
6 a number of referrals that staff will be recommending
7 for referral to the office of Attorney General's
8 Office. The first matter is CMB Roads Limited
9 Liability Company, Countryshire. J.H. Berra, Junior,
10 is doing business as CMB Road, Limited Liability
11 Company and is developing property in
12 St. Charles County for residential purposes.

13 This project known -- is known as
14 Countryshire, and consists of 114.5 acres, of which
15 111.9 acres are to be disturbed. Storm water run off
16 from this site discharges to tributary Dardenne Creek
17 pursuant to Missouri State operating permit. From
18 August 25th through October 31st, 2005 the department
19 staff documented a lack of adequate best management
20 practices prior to beginning land disturbance activities.

21 This lack of best management
22 practices was evident due to heavy deposits of sediment
23 in the receiving stream. J.H. Berra related companies
24 have an extensive history of non-compliance with the
25 state and federal laws and regulations. J.H. Berra

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1 related companies have had a land reclamation permit
2 revoked, a bond forfeited, received over 58 notices of
3 violation for -- violations of the state environmental
4 laws, entered into 14 settlement agreement with the

5 department and violated terms of four of those
6 agreements.

7 J. H. Berra related companies have
8 also been involved with three separate enforcement
9 action with the EPA for violation of Federal Clean
10 Water Act. Staff recommended the matter be referred to
11 the office of Attorney General Office.

12 CHAIRMAN HERRMANN: Okay. We have
13 a request from Sarah Maguffee

14 MS. MAGUFFEE: Thank you,
15 Mr. Chairman and Commissioners. I appreciate this
16 opportunity to address you briefly. I am a lawyer and
17 I am here representing CMB Roads, Inc., which is the
18 entity that is responsible for storm water compliance
19 at the Countryshire development, which is the
20 development at issue in this particular referral
21 matter. CMB Roads is also the entity that was
22 identified in the department's referral letter.

23 We simply would like the Commission
24 to know that CMB Roads has responded to the NOV's
25 issued by the department in terms of implementing best

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1 management practices that we have not had an
2 opportunity to resolve these NOV's with the department.
3 We do not agree with the department's characterization
4 of these matters. And we're looking forward to
5 addressing the issues with the Attorney General's
6 Office. Thank you.

7 CHAIRMAN HERRMANN: Thank you. So
8 you don't have an objection to going before the

9 Attorney General to defend yourself? Fine. Do we have
10 a motion relative to staff recommendation?

11 COMMISSIONER KELLY: I move that
12 we do send the matter to the Attorney General.

13 COMMISSIONER PERRY: I second.

14 CHAIRMAN HERRMANN: Moved and
15 seconded. Any discussion? Hearing none, the matter
16 will be referred.

17 MR. MOHAMMADI: The next item is
18 Lakewood Mobile Home Park. In October 2004, Mr. Steve
19 Stumpe purchased the Lakewood Mobile Home Park,
20 known as Lakewood, from Mr. Leslie Ray. Since
21 the acquiring Lakewood, Mr. Stumpe has submitted
22 timely payment for the annual permit fee associated
23 with Missouri State operating permit. Prior to Mr.
24 Stumpe purchasing Lakewood, Mr. Ray had filed -- had
25 failed to submit his annual permit fee for 2004.

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1 The department staff have contacted
2 Mr. Ray by phone several times. Mr. Stumpe has paid
3 partial payment on the delinquent permit fee and has
4 agreed to make payment on the remaining amount.
5 Therefore, Mr. Chairman and the Commission, I recommend
6 matter to be referred to the office of Attorney General
7 Office contingent upon we do not receive remaining
8 payment within 30 days.

9 CHAIRMAN HERRMANN: Is there anyone
10 here representing Leslie D. Ray?

11 COMMISSIONER EASLEY: What's the
12 dollar amount of the fine?

13 MR. MOHAMMADI: There is no fine.
14 It was \$588.00 total that is permit fee and interest.
15 And the interest is \$80.00 remaining.

16 COMMISSIONER PERRY: Will the
17 Attorney General take them to small claims court?

18 MR. MOHAMMADI: Well, the
19 Environmental Division don't even handle the collection
20 of the fee. It goes to the collection section of the
21 Attorney General Office.

22 CHAIRMAN HERRMANN: You use the
23 term court of competent jurisdiction, which covers a
24 lot of ground. Right?

25 MR. MOHAMMADI: That's right.

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1 CHAIRMAN HERRMANN: Does anyone
2 want to entertain a motion relative to a referral of
3 Leslie D. Ray?

4 COMMISSIONER EASLEY: I'll make a
5 motion.

6 COMMISSIONER PERRY: Now, you're
7 recommending that this not actually be referred for 30
8 days, giving him those 30 days to make that payment;
9 was that correct?

10 MR. MOHAMMADI: Actually, the
11 motion is to be referred contingent upon no payment is
12 received within 30 days.

13 COMMISSIONER PERRY: Okay.

14 MR. GALBRAITH: So we would
15 hold it for 30 days?

16 MR. MOHAMMADI: That is correct.

17 COMMISSIONER EASLEY: And you will
18 note -- notify them of this 30 days. Right?

19 MR. MOHAMMADI: Yes, indeed.

20 COMMISSIONER HARDECKE: I'll make
21 that motion.

22 COMMISSIONER KELLY: Second the
23 motion.

24 CHAIRMAN HERRMANN: Moved and
25 seconded. Any discussion? Motion passes.

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1 MR. MOHAMMADI: The next item is
2 Sears Hog. I'm sorry. Motion passed?

3 MR. GALBRAITH: Yes.

4 MR. MOHAMMADI: Okay. Thank you.
5 Next item is Sears Hog operation. Mr. Charles Sears
6 owns and operates the Sears Hog operation located in
7 Pettis County. On September 22nd, 2005, department
8 staff conducted a complaint investigation in response
9 for a complaint of animal waste in a tributary
10 Shaver Creek.

11 Staff observed swine waste had
12 impacted the tributary and resulted in a fish kill.
13 Staff traced the source of the swine waste to the Sears
14 Hog operation where staff had observed Mr. Sears
15 attempting to land apply waste with other proper
16 equipment.

17 On December 6th, 2005, the Water
18 Protection Program sent correspondence to Mr. Sears
19 offering to resolve the past violation through an
20 out-of-court settlement agreement. Despite several

21 letters between the program and Mr. Sears' attorneys,
22 we have not received any indication that Mr. Sears is
23 interested in resolving this matter through an
24 out-of-court settlement. Therefore, staff recommend
25 the matter to be referred to the office of Attorney

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1 General Office for appropriate legal action.

2 CHAIRMAN HERRMANN: We have a
3 request to speak to the Commission from Charles E.
4 Sears?

5 MR. SEARS: I talked to my attorney
6 yesterday, sir. And he wants to see if I can get a
7 continuance. These allegations -- I was -- well, I
8 don't want to get into it. There's major problems out
9 here in the swine and CAFO industries. I'm telling you
10 that right now. I would like to know -- we had major
11 rainfall the day that this happened. I'm dealing with
12 a corporation and dealt with them for eight years.
13 What are we supposed to do with swine waste when I had
14 proper equipment out there.

15 I've got dams all over my property
16 to keep the stuff from running off. I believe there's
17 an injustice being done here. My neighbor -- DNR told
18 me who the guy was that turned me in. The man that
19 turned me in put the fish in the creek down there;
20 dammed the creek up not too far from below me and had a
21 whole lot of cattle in that creek down there.

22 I mean I'm a little bit upset with
23 this whole thing. I mean I know what -- I am very,
24 very much against polluting streams, but I want to

25 know -- I've asked DNR many times -- and I've told them

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1 I've had runoff. They've nothing done about it.
2 Nothing. When I'm not the only producer that's having
3 this problem. I have begged. I have pleaded with
4 these people. And my attorney is talking to them right
5 now. We are trying to get to a conclusion on this
6 deal, but there's an injustice being done here.

7 I'm being picked out because I
8 speak up about what's going on. And I will keep
9 speaking out about these situations and these matters
10 because I believe these creeks in this state -- we need
11 to be taking a closer look and helping them instead of
12 fining them. I'm having to file bankruptcy now. I'm
13 just barely making it by.

14 Yes sir, I did. It went off into
15 the creek. We had major rainfalls. I had a
16 corporation that left the hogs in there so long that
17 they doubled my permit. I had a letter of intent is
18 all I had. I asked DNR, I said, why didn't you tell me
19 to -- that I was supposed to have a letter or a -- a
20 letter to put it, you know, approval or whatever you
21 call it to be able to do this. A permit. I wasn't
22 required when I did this.

23 I mean it just goes on and on and
24 on. We have been trying to talk to these people and
25 that, but I've -- I've said so much right now, I

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1 believe that there's more behind this than meets the
2 eye and I'd like to have a continuance. I don't have
3 the money so that my attorney can -- I don't have the
4 \$100.00 to pay him to do this. He's doing it on his
5 own free gratis. He's trying to help me out and I have
6 done everything.

7 I would like for somebody to come
8 to my farm. I've had DNR out there on other issues
9 and --

10 COMMISSIONER PERRY: Were you in
11 front of this commission?

12 MR. SEARS: No, ma'am. I was not.
13 This is the first time. But I feel there's an
14 injustice being done to farmers that -- the fine that's
15 being assessed to me -- I mean when your accuser
16 accuses something -- and he's told this fellow that I
17 was farming for that he put the -- he's got the creek
18 dammed up down there and he had cattle, a major amount
19 of cattle.

20 I've got the equipment. My
21 sprinkling gun, sir, was broke is what the problem was.
22 And I watched it for two days out there. I pumped it
23 one day and then the next day I pumped. And other day
24 I went to the house and they was up there talking to me
25 and that's how the stuff went off into the creek. But

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1 I've got other issues that -- my ground -- whoever
2 permitted to my property when I took it over from this
3 other fellow, Cargill Pork was involved in this deal.

4 It seems like everything gets shoved under the table.
5 I've got problems where it seeps
6 through the ground and out into the creeks down there.
7 I've told DNR this. What do they say? Nothing. It's
8 not a problem. If somebody reports it, then it's going
9 to be a problem. I feel like there's an injustice,
10 very much, sir, very much.

11 I mean you've -- you folks, I don't
12 believe -- you know what's going on, but I -- I am
13 trying to make a living out there and I'm not wanting
14 you to feel sorry for me. That's not what I don't want
15 you to do. I want you guys to do what you have to do,
16 but I feel like there's more involved in this than just
17 giving out fines. I mean this is the first time it's
18 happened. And I've been out there eight years and I do
19 try to protect my property. I don't let my -- I've got
20 a creek -- I've got springs all over my property.
21 Springs in that place should not even be there.

22 I am out of pigs now. I'm not
23 going to raise no more like that. I'm going to put
24 them on the dirt or whatever I have to do. But I tell
25 you what, I challenge anyone to come out to my farm and

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1 Look at the situation I have and what's been done about
2 it when I've told these people time over again and
3 again that I've had problems out there. Nothing was
4 done and now I've got a spill and we -- what are we
5 supposed to do, sir, when we have all this rain?

6 Nobody tells us this. They said
7 that -- the man that came out there, Joe Heffner, told

8 me, said well we would rather you put it out on the
9 ground than break the dam. I mean these are some
10 serious issues that we're dealing with and I'm one
11 farmer that's -- I've had enough. I've had enough.

12 COMMISSIONER EASLEY: How long of
13 a continuance are you requesting?

14 MR. SEARS: We need to get the
15 paperwork. I don't have the money to pay it. I need
16 \$100.00 so that my attorney can look at the papers of
17 the other people that have been fined and what kind of
18 fines they was assessed with. In other words, they're
19 charging me \$15,000.00.

20 COMMISSIONER EASLEY: Who?

21 MR. SEARS: DNR.

22 COMMISSIONER EASLEY: That's the
23 amount of the fine?

24 MR. SEARS: Yes, because of the
25 fish kill and everything else.

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1 COMMISSIONER EASLEY: Okay.
2 Again, my question is how long of a continuance are you
3 requesting?

4 MR. SEARS: Well, my attorney
5 didn't say, but I don't know.

6 COMMISSIONER EASLEY: It's pretty
7 hard to ask for a continuance --

8 MR. SEARS: Yes, sir it is. I'd
9 say six months. We've been dealing with it for some
10 time now. We've been talking. My attorney's been
11 talking back and forth with these gentlemen.

12 COMMISSIONER PERRY: Sir, are you
13 aware of the fact that this referring to the AG's
14 office simply puts you in a position to have your
15 lawyer talk to the State's lawyer?

16 MR. SEARS: Right.

17 COMMISSIONER PERRY: And are you
18 opposed to that action? Because it seems to me that
19 right now you're having some trouble working with the
20 department and perhaps working through legal channels
21 may, in fact, resolve your crisis--

22 MR. SEARS: If that's the way it
23 has to go, ma'am, that's the way we need to do it then.
24 I don't understand all this. I'm not an attorney, but
25 I -- I just want something -- we are having troubles

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1 with them. We've asked -- my attorney has asked these
2 folks to send these papers that shows the similarities
3 of the hog swine waste, you know, the permits and
4 non-permitted guys and stuff. And there's been no
5 response. It's been just dragging on, just dragging on
6 and dragging on.

7 COMMISSIONER PERRY: Well, and I
8 believe he's asking them for some legal documents there
9 and again, wouldn't that be better dealing with the
10 State's attorneys?

11 MR. SEARS: I -- like I said again,
12 I'm not an attorney, but I guess if that's what we need
13 to go, I guess that would probably be the way that we
14 need to do. But I just would really, really ask you
15 all that you would check into these matters because

16 these are very serious. These CAFOs things are out of
17 hand. I mean --

18 COMMISSIONER HARDECKE: The
19 background we have here, this incident happened on
20 September 22nd, '05; is that right?

21 MR. SEARS: Yes, sir.

22 COMMISSIONER PERRY: And you no
23 longer have hogs?

24 MR. SEARS: The same people that I
25 was having trouble with -- I had 150-pound pigs in my

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1 barns when my permit only said down to 50 to 60 pounds
2 is what I was supposed to raise. Because I've got a
3 nursery is what I have. But the corporation put me
4 into the situation where I had three times the size
5 hogs in my barns, plus the rain caused my lagoon to
6 just come up. And I never had troubles where it was
7 running over. Never the whole time I was there.

8 COMMISSIONER PERRY: That has
9 something to do with you didn't have a market for
10 those? Why --

11 MR. SEARS: Ma'am, I don't sell
12 them. When I -- I was with a corporation, they moved
13 the hogs. I told them about it. Their hogs was dying
14 and everything else. And they left them in there and
15 this problem occurred and then they finally did move
16 them out. But here about two weeks ago, not even two
17 weeks, I had the same situation with the same company.

18 I told them you need to leave my
19 farm in so many days. I gave them to the end of

20 February to leave. They decided well we're just going
21 to leave these pigs in there for the 100-plus pounds.
22 Well, I've got six more inches in my lagoon again. I'm
23 afraid to pump anymore. I --

24 COMMISSIONER PERRY: And our
25 concern is the immediate environmental hazard --

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1 MR. SEARS: Yes, ma'am.

2 COMMISSIONER PERRY: -- that is
3 presented here --

4 MR. SEARS: Yes, ma'am.

5 COMMISSIONER PERRY: And I thought you indicated a
6 few minutes ago that you were no longer in pigs.

7 MR. SEARS: No. I do not have pigs
8 on the property and I'm not intending on putting --
9 dealing with corporations no more.

10 COMMISSIONER PERRY: And you, too
11 sir, have a lagoon yet, on the property?

12 MR. SEARS: I still -- yes ma'am, I
13 do.

14 COMMISSIONER PERRY: And what is
15 the status of the fullness of that?

16 MR. SEARS: The fullness of the
17 lagoon, I've got six inches on that lagoon. I've got
18 my crops out, but when I put it out, I have found
19 out -- I have dug on my property because I've -- I've
20 been to a lot of DNR meetings and everything. I mean I
21 went to meetings.

22 I have dug on my property, ma'am.
23 And when you go down this deep, I've got a clay liner

24 down there with a bunch of rocks and stuff in it. I
25 didn't know where this stuff was getting into the creek

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1 at because I did apply it properly except for that
2 morning that I come up to the house and it was running
3 off down into -- it run off into my dam and run off
4 into the stream.

5 I'm not denying it happened, but I
6 had major hog -- size hogs. I had 150-pound pigs in my
7 barns. I had rain. We had a lot of rain there, about
8 30 inches. I even given them a letter stating that and
9 they checked and they said we only had 10 inches in the
10 area. That is not the truth. I know -- I know we had
11 more than that. I mean --

12 COMMISSIONER PERRY: And if
13 you're implying that there is some sort of
14 responsibility perhaps due to some other party that's
15 involved in this --

16 MR. SEARS: Yes, ma'am.

17 COMMISSIONER PERRY: -- if you
18 were to have a litigation, you could also involve that
19 party.

20 MR. SEARS: Yes, ma'am.

21 COMMISSIONER PERRY: It seems to
22 me that might be more relief for you than just working
23 this out. It seems pretty obvious that it's not being
24 worked out.

25 MR. SEARS: Yes, ma'am, it's not.

1 It's not being worked out. I mean I don't know -- yes.

2 COMMISSIONER HARDECKE: Was there
3 something that kept you -- prevented you from land
4 applying --

5 MR. SEARS: Yes, sir. My crops --

6 COMMISSIONER HARDECKE: -- your
7 waste prior to --

8 MR. SEARS: -- was on the field
9 yet. And I put it out in my grassy areas and stuff.
10 And my lagoon has also turned -- it was pink. I quit
11 flushing. There's a -- there's -- I stopped flushing
12 my barns. And everything was working perfect until
13 they left the hogs in there so long. I've got flush
14 tanks that goes in. They slope out. They go out into
15 the lagoon. Well, by doing that all the time, that
16 kept that stirred up out there, real nasty and stuff.

17 When I applied this, I got
18 sprinkle -- I -- I don't know if you're a farmer or
19 not, but you know how hogs gets salty and you get
20 really none of this. I even put -- went to town and I
21 got some -- I can't remember what they was, but some
22 flowers or whatever the nursery had up there. And they
23 said, you put them in -- lily pads, I think it was or
24 something like that -- with Styrofoam in it. I laid
25 them out there. He said if they die within so many

1 days, you've got problems in that lagoon. Two weeks
2 never killed them. Laid them out there and it was
3 pink.

4 They tested the water down in the
5 creek and tested over where the neighbor -- where the
6 fish was killed. And it was higher over there than it
7 was when it went into the creek by my property. I mean
8 they never tested the lagoon itself. And I know when
9 that lagoon's hot and when it's cold and when it needs
10 to be pumped and when not. I mean I have tried -- I
11 tried my very best, but my question would be what is a
12 person supposed to do when you get into this situation?
13 Just let it run over the dam?

14 I mean I realize the question you
15 asked awhile ago, ma'am. I know that there's another
16 party involved in here, but if I was told that I had to
17 have a permit, I would have had a permit. But my
18 lagoon had done changed colors. I mean I hated it
19 happened. I am very shameful that it happened. And it
20 wouldn't have happened if I wouldn't put -- been put in
21 the position that I was put into.

22 COMMISSIONER HARDECKE: You didn't
23 have any land available?

24 MR. SEARS: No, sir. No, sir,
25 other than the grass. And what it is, is a lot of

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1 hills is what it is. North of barn and go to the east.

2 COMMISSIONER HARDECKE: You couldn't
3 have put them on the grass?

4 MR. SEARS: Yes, sir, I did. I was
5 applying it on the grass.

6 COMMISSIONER PERRY: Maybe he was
7 using the wrong equipment.

8 MR. SEARS: But that is what they
9 was saying, I was using the wrong equipment. That's --
10 the only thing I was not using was my -- my -- my
11 sprinkler system. But if I'd used that it would have
12 got off in the creek, too, because it shoots it way out
13 there and I was trying I and apply it and then shut it
14 off when it got saturated in the area and to moving.
15 And that's what I was a doing. Yes, sir.

16 CHAIRMAN HERRMANN: Can I ask
17 Kevin -- Kevin, your initial recommendation is to have
18 the Attorney General institute civil action --

19 MR. MOHAMMADI: That's correct.

20 CHAIRMAN HERRMANN: -- that's
21 appropriate with Mr. Sears' concerns and what's been
22 explained to us to have this referred to the Attorney
23 General for negotiation or clarification or something
24 other than the civil action?

25 COMMISSIONER PERRY: Isn't that

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1 part of the process?

2 MR. MOHAMMADI: Right.

3 Mr. Chairman, there are -- there was a fish kill, there
4 is the loss to state resources, value of the fish.
5 There is investigative cost and there is penalty
6 involved. And I have personally talked to Mr. Sears'
7 attorney several times and there is no indication that
8 they are willing to resolve this out of court.

9 CHAIRMAN HERRMANN: My principle
10 point was to Mr. Sears, if this is referred to the
11 Attorney General as Commissioner Perry suggested, you

12 have someone of legal standing to whom you can present
13 your argument and perhaps get either enforcement or
14 relief, one of the two.

15 MR. MOHAMMADI: Absolutely.

16 CHAIRMAN HERRMANN: Or partial
17 relief, whatever. But it would give Mr. Sears an
18 opportunity to explain to someone with legal standing
19 what his concerns are for --

20 MR. MOHAMMADI: That is correct.

21 CHAIRMAN HERRMANN: -- the
22 situation is. Okay.

23 MR. SEARS: Yes, sir. Thank you.

24 CHAIRMAN HERRMANN: You're welcome.

25 COMMISSIONER PERRY: So do we

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1 make the motion?

2 CHAIRMAN HERRMANN: Yeah.

3 COMMISSIONER PERRY: I make the
4 motion that this be referred to the Attorney General's
5 Office.

6 COMMISSIONER KELLY: Second the
7 motion.

8 CHAIRMAN HERRMANN: Moved and
9 seconded. Any discussion? Motion's approved. And I
10 have a note from our director that says that lunch is
11 here. So we would need the motion for a closed
12 session.

13 COMMISSIONER PERRY: I move that
14 the Clean Water Commission go into closed session to
15 discuss legal, confidential, or privilege matters under

16 Section 610.021, Subsection 1 regarding confidential
17 privileged, personnel actions, Subsection 13, regarding
18 personnel records or applications or Subsection 14,
19 regarding records, which are otherwise protected from
20 disclosure by law.

21 COMMISSIONER EASLEY: Second.

22 CHAIRMAN HERRMANN: Moved and
23 seconded. Any discussion? We'll be in closed session,
24 say we'll reconvene at 1:15.

25 (WHEREIN; a lunch recess was

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1 taken.)

2 MR. MOHAMMADI: It's on.

3 MR. MOHAMMADI: Two more matters,
4 Mr. Chairman. The next matter is Countryside Bistro
5 Limited Liability Company. Country Bistro Limited
6 Liability Company owns and operates a restaurant known
7 as --

8 CHAIRMAN HERRMANN: Excuse me,
9 Kevin. We just got direction from the director. We
10 didn't come out of closed session. We need a motion.

11 COMMISSIONER PERRY: I move that
12 we come out of closed session.

13 COMMISSIONER HARDECKE: Second.

14 CHAIRMAN HERRMANN: And reopen open
15 session.

16 COMMISSIONER PERRY: And reopen.

17 COMMISSIONER HARDECKE: Second that.

18 CHAIRMAN HERRMANN: Okay. And it's
19 been moved and seconded. Any discussion? Okay. We're

20 now back in open session, so we're legal. Go.

21 MR. MOHAMMADI: Okay. Countryside,
22 excuse me --

23 CHAIRMAN HERRMANN: Thank you.

24 MR. MOHAMMADI: -- Bistro Limited
25 Liability Company owns and operates a restaurant known

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1 as Countryside Bistro in Nodaway County on. On
2 September 2005 the company entered into a settlement
3 agreement with the department and Attorney General
4 Office to resolve the past violation of Missouri Clean
5 Water Law. As part of that agreement the company
6 agreed to submit a complete application for
7 construction permit and engineering report including
8 plans and specs and appropriate application fee by
9 November 16, 2005.

10 The company failed to meet the
11 agreements while still continued to use the failing
12 system that was constructed with other permits and is
13 operating without an operating permit. The Attorney
14 General Office has sent correspondence to the company
15 on November 22nd, 2005 and January 2006, requesting
16 immediate submittal of the application and report.

17 To date the department has not
18 received the requirement of the items. Therefore,
19 staff recommends the matter to be referred to the
20 Office of Attorney General. We have had a call from
21 the consulting firm that represents them that they are
22 going to be working and submitting report --
23 engineering report plans and specs.

24 COMMISSIONER EASLEY: Did they
25 give you a date on that?

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1 MR. MOHAMMADI: They didn't give us
2 any specific date.

3 CHAIRMAN HERRMANN: Is there anyone
4 here representing Countryside Bistro? Apparently not.
5 Any further questions of Mr. Mohammadi in this matter?
6 If not, Chair would entertain a motion relative to
7 referral.

8 COMMISSIONER EASLEY: Move to refer to AGO.

9 COMMISSION KELLY: Second the
10 motion.

11 CHAIRMAN HERRMANN: Moved and
12 seconded. Any discussion? Do we need to vote?

13 MS. OVERHOFF: Commissioner Perry?

14 MS. PERRY: Yes.

15 MS. OVERHOFF: Commissioner

16 Hardecke?

17 MR. HARDECKE: Yes.

18 MS. OVERHOFF: Commissioner Easley?

19 MR. EASLEY: Yes.

20 MS. OVERHOFF: Commissioner Kelly?

21 MS. KELLY: Yes.

22 MS. OVERHOFF: Chairman Herrmann?

23 CHAIRMAN HERRMANN: Yes.

24 MR. MOHAMMADI: Next item is Trager

25 Limestone Company. Trager Limestone Company owns and

1 operates a quarry operation located in Daviess County.
2 On March 3rd, 2005, staff conducted an inspection of
3 the quarry operation and observed heavy deposits of
4 limestone in Dog Creek.

5 Staff also observed a large stock
6 pile of limestone material had been pushed over the
7 edge of the creek bank into the defined creek channel.
8 On October 2005, Mr. Trager contacted the staff by
9 phone in response to the department's offer of an
10 out-of-court settlement to resolve the violations.
11 During this conversation staff requested that
12 Mr. Trager submit a written response to the offer.

13 The department follow-up on this
14 conversation with a letter dated December 6th, 2005, to
15 Mr. Trager requesting a response. Staff also called
16 Mr. Trager on two separate occasions leaving one
17 voicemail message and one message with the
18 receptionist. Since Mr. Trager's initial response, he
19 has not responded to any of the department's efforts to
20 discuss or resolve the violation at his operation.
21 Therefore, staff recommends the matter to be referred
22 to the Office of Attorney General.

23 CHAIRMAN HERRMANN: Is anyone in
24 attendance representing Trager Limestone? If none, do
25 we have any questions of Mr. Mohammadi? Hearing none,

1 the Chair would entertain a motion relative to
2 referral.

3 COMMISSIONER KELLY: I move the
4 Clean Water Commission request the Missouri Attorney
5 General to institute a civil action against Mr. Trager.
6 COMMISSIONER PERRY: Second.
7 CHAIRMAN HERRMANN: Moved and
8 seconded. Any discussion? Please call for the vote.
9 MS. OVERHOFF: Commissioner Perry?
10 MS. PERRY: Yes.
11 MS. OVERHOFF: Commissioner
12 Hardecke?
13 MR. HARDECKE: Yes.
14 MS. OVERHOFF: Commissioner Easley?
15 MR. EASLEY: Yes.
16 MS. OVERHOFF: Commissioner Kelly?
17 MS. KELLY: Yes.
18 MS. OVERHOFF: Chairman Herrmann?
19 CHAIRMAN HERRMANN: Yes.
20 MR. MOHAMMADI: Thank you.
21 CHAIRMAN HERRMANN: Motion passes.
22 Thank you, Kevin. Do you want to go onto the staff
23 updates?
24 MR. GALBRAITH: We have 319.
25 CHAIRMAN HERRMANN: Yeah. Okay.

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1 You're requested action down here -- all right. Staff
2 updates; 319 grant status, Becky Shannon.
3 MS. SHANNON: Good afternoon,
4 Chairman Hermann, members of the Commission. Each year
5 the department brings to you a prioritized list of
6 projects for which we've received applications for 319

7 grant funding. This is to address non-point sources of
8 water pollution. In the past, the Commission has asked
9 us for status reports of those projects, and that's
10 what's included under tab 11 in your packet.

11 We've provided you with one of
12 these a little over a year ago in a different format.
13 At that time we sent to you one that just a copy of
14 each of the most recent quarterly report for each of
15 the projects. This one is more of a summary format.
16 It doesn't give a lot of detail, but it talks about
17 each one of the projects to give you a description.

18 And I'd welcome any -- any feedback
19 you might have about what your preference is for format
20 on that. I also wanted to let you know that we
21 recently sent out the request for proposals for 319
22 grant applications or grant proposals. The due date
23 for that is June the 19th. And we will, as in the
24 past, notify you of when that grant review is if you
25 want to sit in on part of that.

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1 Also to let you know, that in that
2 RFP we're combining to years of funding; FY06 and FY07
3 from EPA. And the reason that we're doing that --
4 you'll see that if you see the RFP, it indicates that.
5 And the reason for that is that our time has -- has
6 lagged. Since 2003, we've -- we've lagged in our
7 application time. And so what we're trying to do is
8 catch up to EPA's time frames for getting our
9 applications done and by combining the two years
10 we'll -- we'll accomplish that and be able to get the

11 money spent more -- more -- in a more timely manner.
12 I'd be happy to answer any
13 questions. If you have questions on specific projects,
14 I'll probably have to do a little research and get back
15 with you on that, but I'd be happy to try and answer
16 any questions you might have.
17 CHAIRMAN HERRMANN: I like your
18 synopsis --
19 MS. SHANNON: That format?
20 CHAIRMAN HERRMANN: -- of each of
21 the projects. Yes.
22 MS. SHANNON: Okay. Good.
23 COMMISSIONER PERRY: I do to, but
24 I was wondering, I believe it was in 2002 we saved back
25 some money.

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1 MS. SHANNON: 2003.
2 COMMISSIONER PERRY: About
3 2 million. Do we have some sort of what -- where that
4 money --
5 MS. SHANNON: I provided that to
6 you not at the last one, but at the -- the last time
7 you were here in this room. I don't know what the date
8 of that meeting was.
9 COMMISSIONER PERRY: I thought
10 that was sort of a list, but I was looking for --
11 COMMISSIONER EASLEY: November.
12 COMMISSIONER PERRY: -- something
13 more specific.
14 MS. SHANNON: You're right. That

15 didn't have descriptions. You want something like this
16 for that information?

17 COMMISSIONER PERRY: Yes, I
18 would.

19 MS. SHANNON: It's changed, by the
20 way, since I gave you that information in November, so
21 we can do that.

22 COMMISSIONER PERRY: Okay. If we
23 could just have an update. Thank you.

24 COMMISSIONER EASLEY: Becky, I
25 notice in some of the cases here, the -- in

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1 midstream -- like some of these are two-, three-,
2 four-, five-year projects. When they get into year two
3 or three they drop and there's -- I assume those funds
4 were never expended. What happens to those funds?

5 MS. SHANNON: That's a good
6 question. If they've -- sometimes they withdraw,
7 you'll see the land -- the Deep Water Creek Project is
8 an example of that, where they withdraw without
9 expending any funds. They didn't even enter into an
10 agreement with us for reasons having to do with the
11 potential success of the project. And in that case
12 what we typically do is redirect those funds.

13 In that particular example, we're
14 taking those funds and putting them towards the top two
15 projects that came in last year. So the funds that --
16 that they didn't use for Deep Water Creek, that didn't
17 go to Deep Water Creek, but was budgeted that way, is
18 being put into the projects that you saw last year for

19 2005 to fund the top two projects, so that that money
20 can go -- can go further.

21 COMMISSIONER EASLEY: One I'm
22 looking at now is Jordan Creek, which is a 1,245,000
23 the project did not occur.

24 MS. SHANNON: Right.

25 COMMISSIONER EASLEY: So that --

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1 those funds went --

2 MS. SHANNON: Exactly.

3 COMMISSIONER EASLEY: -- to
4 another -- some of these other projects?

5 MS. SHANNON: Some of those other
6 projects. Sometimes some of it may go for staff needs,
7 if we have administrative staff needs or for monitoring
8 needs it well -- as well. I think (indiscernible)
9 Creek is an example of one that was funded with the
10 Jordan Creek money. And a number of projects were with
11 that Jordan Creek money.

12 COMMISSIONER HARDECKE: What are the
13 requirements of a sponsor for one of these projects?
14 Or who qualifies with that?

15 MS. SHANNON: A unit of government,
16 not-for-profit agency. It has to be 501C3 status or an
17 educational institution.

18 COMMISSIONER HARDECKE: 501C.

19 MS. SHANNON: 501C3. Unit of
20 government --

21 (End of Tape 2, Side B)

22 (Start of Tape 3, Side A)

23 MS. SHANNON: Yes. That's
24 what you were referring to.
25 COMMISSIONER PERRY: That's what

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1 I was looking for.

2 COMMISSIONER PERRY: Okay. And
3 this is what I was looking for.

4 MS. SHANNON: It doesn't have all
5 of the information, as far as the funding that you had
6 set aside because some of that money is used to fund a
7 watershed planning grant program, separate from -- and
8 that's not discussed in here. But all of the specific
9 projects --

10 COMMISSIONER PERRY: It said
11 (inaudible) grant up to \$5,000.

12 MS. SHANNON: Similar to that, but
13 those specific projects that were discussed are
14 included in this. Since that time though, even since
15 we did this, some of those have changed because of
16 reorganizations within the department.

17 COMMISSIONER PERRY: Okay. And
18 where we are (inaudible) six process we've sent out in
19 RFP, and a postcard telling everybody about a meeting.

20 MS. SHANNON: Exactly.

21 CHAIRMAN HERRMANN: Any other
22 questions for Becky? Thank you, Becky.

23 MS. SHANNON: Thank you.

24 CHAIRMAN HERRMANN: When will see
25 another update similar to this one.

1 MS. SHANNON: Next year at
2 this time, we hope.

3 CHAIRMAN HERRMANN: Okay.

4 MS. SHANNON: Unless you want it at
5 some other time. My expectation is that we do it at
6 the first of the year, every year about that time, if
7 that works for the Commission.

8 CHAIRMAN HERRMANN: Would you
9 anticipate any significant changes by six months from
10 now?

11 MS. SHANNON: No.

12 CHAIRMAN HERRMANN: Okay. No
13 projects dropped?

14 MS. SHANNON: There may be some
15 that finish in this, but no. We wouldn't have started
16 our 2006 projects, obviously. We might have a few
17 projects that aren't on this list that will be active
18 by then from -- now, I wouldn't -- I wouldn't
19 anticipate many changes at all to it in six months.

20 CHAIRMAN HERRMANN: Okay.

21 COMMISSIONER EASLEY: Could you
22 furnish us with a list of those projects that you're
23 going to fund in your next -- as soon as that's been
24 determined?

25 MS. SHANNON: Yes.

1 COMMISSIONER EASLEY: That should
2 be in the next, what, 60 days?

3 MS. SHANNON: It would be the FY05
4 appli cation.
5 COMMI SSIONER EASLEY: Ri ght.
6 Ri ght.
7 MS. SHANNON: Yes. We can do that.
8 COMMI SSIONER EASLEY: So we can
9 determi ne whi ch one --
10 CHAI RMAN HERRMANN: Do I get
11 another --
12 MS. SHANNON: Yes.
13 CHAI RMAN HERRMANN: Fi le box full
14 of appli cations?
15 MS. SHANNON: We don' t know yet how
16 l arge that fi le box would be, but we' re going send them
17 all to you.
18 CHAI RMAN HERRMANN: I think I got a
19 couple of compl ai nts from herni as from the postman.
20 Okay. State Revol vi ng Fund Spring Closi ng, Doug
21 Garrett.
22 MR. GARRETT: Good afternoon.
23 CHAI RMAN HERRMANN: Good afternoon.
24 MR. GARRETT: Tab 12 of your packet
25 is a bri ef wri te up on the spring closi ng thi s year.

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1 There' s a couple l i ttle changes to that. The closi ng
2 has been put off one week. So the closi ng wi ll
3 actual ly occur on April 26th and 27th wi th prici ng
4 sti ll set for April 3rd and 4th. The li st of
5 communi ties you have that are in your packet -- as a
6 resul t of our due di l i gence cal ls wi th the fi nance

7 team and the communities, some of the amounts of the
8 loans have changed.

9 Seneca has gone up to
10 \$780,000. Wardsville was reduced. It will be \$760,000.
11 Platte County Sewer District, we're looking at
12 \$12,000,225 and Raytown, \$7,000,815. So a total loan
13 amount for this closing then will be \$86,870,000. And
14 the finance team is currently working on the documents
15 for the communities, listing out what their schedules
16 will be for repayment of the loans. And our bond
17 counsel, Gilmore and Bell is working with the
18 communities to have them in a position to pass their
19 local ordinances, allowing them to proceed with this
20 closing, so everything is on schedule.

21 CHAIRMAN HERRMANN: That final
22 figure again, please?

23 MR. GARRETT: \$86,870,000.

24 COMMISSIONER PERRY: It says
25 15,000 more than we have here.

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1 CHAIRMAN HERRMANN: Thank you.

2 MR. GARRETT: Yes. Right.

3 COMMISSIONER PERRY: And did I
4 hear you say something -- did you say Platte County or
5 Pike County?

6 MR. GARRETT: Platte County.

7 CHAIRMAN HERRMANN: Excuse me.

8 MR. GARRETT: In addition to the
9 closing, there is one other item that I wanted to bring
10 to your attention that the staff are working on. We

11 have received guidance from the Environmental
12 Protection Agency regarding the use of the loan fees
13 that we charge our loan recipients. We have been
14 charging a fee which amounts to one-half a percent of
15 the outstanding loan balance to the community. And
16 that is assessed annually. And we have been doing that
17 since the inception of the program.

18 EPA has come out with guidance that
19 basically states how that program income may be used.
20 And they have indicated in their guidance that the
21 program income earned during a capitalization grant
22 period is limited to putting that administration fee
23 towards the administrative costs of running our
24 program, staffing, etceteras, to use as a match
25 requirement for future capitalization grants or loans.

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1 The -- any program income we
2 receive after a capitalization grant period in addition
3 to those three areas, they will allow us to use it to
4 offset the cost of administration, Clean Water SRF
5 program and the Drinking Water SRF program, since both
6 of those SRF programs are within the same agency. And they also
7 will allow the use of those fees for various water
8 quality activities such as TMDLs, doing non-- or for
9 NPDES permitting issues; planning, design and
10 construction of water quality -- I can't think of the
11 word -- water quality projects.

12 And there has been quite a bit of
13 discussion as I understand from some states EPA and EPA
14 in the headquarters on some specifics and those

15 guidance says planning design and construction of water
16 quality activities. It doesn't necessarily say we can
17 do waste water treatment plants. And so that has been
18 specifically asked by the State of Nebraska. And the
19 response that they received was yes it could be. So
20 that's something else that can go into the mix now.

21 COMMISSIONER PERRY: How big --

22 MR. GARRETT: So we will --

23 COMMISSIONER PERRY: How much
24 money do we have --

25 MR. GARRETT: I'll get to that.

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1 That's one of the things that -- right now we're
2 looking at our accounts because we're going to have to
3 show EPA what we've earned that would be considered
4 income earned during the grant periods versus income
5 not during a grant period. And so we have been kind of
6 crunching those numbers.

7 And as long as you all don't hold
8 me to this, preliminary numbers indicate that the non--
9 or the program income earned outside of the grant
10 period, which gives us the most flexibility with it --
11 that that income is in the neighborhood of 800,000 to a
12 million dollars. And then the balance --

13 COMMISSIONER PERRY: 800,000
14 what?

15 MR. GARRETT: 800,000 to one
16 million dollars.

17 COMMISSIONER PERRY: Okay.

18 MR. GARRETT: Somewhere in there.

19 And that's very rough. The program income tied to
20 capitalization grants is in the neighborhood of 10
21 million dollars earned to date. Now, we -- there have
22 been expenditures out of those fees, so for the last
23 several years now we have been using that fee income to
24 administer our program. So that 100 percent of our
25 capitalization grant can go to projects.

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1 And the initial take on our reviews
2 is that the cost of running the program exceed the
3 revenues that are coming in on an annual basis. But
4 here again, as we get into doing further analysis of
5 the fee issue and have discussions with EPA, we'll have
6 a better idea of what we can and can't do with our fees
7 account balances. And that all, of course, will be
8 presented to you at a future Commission meeting.

9 We will also -- have been giving
10 thought to how this will be presented in the intended
11 use plan. Because we do know that, you know, as part
12 of the program, you know, everybody wants to see what
13 you really have coming in and what's going out. So we
14 will be addressing that as well.

15 If there's any other questions --

16 CHAIRMAN HERRMANN: The total
17 existence of this program there have been zero
18 defaults; is that not correct?

19 MR. GARRETT: That is correct.

20 CHAIRMAN HERRMANN: I think that's
21 a significant thing --

22 COMMISSIONER PERRY: That's

23 pretty impressive.

24 CHAIRMAN HERRMANN: -- to point
25 out. And I have difficulty in accepting that EPA tell

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1 us how to deal with our own money.

2 MR. GARRETT: Understood.

3 COMMISSIONER PERRY: They're not
4 here now.

5 CHAIRMAN HERRMANN: Any other
6 questions of Doug?

7 Thank you, Doug. And now Lake Breeze subdivision.

8 MR. DICKERSON: Good afternoon
9 Chairman Herrmann and Commission members. My name is
10 Paul Dickerson. I'm unit chief with the compliance and
11 enforcement section in the water control -- water
12 pollution control branch and I'll be presenting a short
13 presentation on a report on the Lake Breeze
14 subdivision. I have a couple of slides I'm going to
15 present and a couple of handouts with the maps and a
16 supplemental map for you to look at.

17 All right. At the January -- this
18 is tab 13 in your agendas. At the January 4th, 2006
19 commission meeting, Ms. Diane Bernard presented her
20 complaint to the Commission regarding the discharge of
21 sewage from a lagoon serving the Lake Breeze
22 subdivision. The Commission directed staff to
23 investigate the complaint. And I'll kind of give
24 you -- let's see. Where this red dot is pretty much
25 the location of where that lagoon is. There's also a

1 lake there. And this -- this blue line represents an
2 intermittent stream is where it actually discharges to.

3 When -- at the -- Michael Heeton
4 and I met -- then met with Kevin Pace, who's a
5 representative from the company who developed this
6 subdivision. During this meeting Mr. Pace described an
7 alternative method -- alternate to move this outfall.
8 And this red line right here is fairly close to what
9 the Bernard property line is. To move this over a bit
10 to where it will flow over to this area right here and
11 flow down through this property.

12 After our meeting with Kevin Pace,
13 we then met with the Bernard's. Mr. Pace presented his
14 alternative and the Bernard's were not satisfied with
15 that result. Mr. Pace will be required to get a
16 construction permit to move the location of the outfall
17 because we're going to be changing the downstream land
18 owner. The permit will have to be public noticed.

19 I've been in contact with Mr. Pace
20 last week. And he's contacted that new downstream land
21 owner and obtained an easement from the downstream land
22 owner that's been put on the deed for this property.

23 Are there any questions? This is
24 an aerial of the site too and you can see a little
25 better where the lagoon location is, where the lake is

1 and then the effluent flows across the property here,

6 to this side. And then they'll do some grading so that
7 it will flow down -- there's a ditch along this service
8 road to get to the lagoon to where it will hit this
9 culvert and run across through -- across this property
10 and into the unnamed tributary. It's an unnamed
11 tributary to Owl Creek.

12 COMMISSIONER PERRY: I
13 understand -- is this right here the lagoon?

14 MR. DICKERSON: Yeah. That's the
15 first -- that's the --

16 COMMISSIONER PERRY: Is this
17 another lagoon?

18 MR. DICKERSON: It's a two-cell
19 lagoon.

20 COMMISSIONER PERRY: Okay.
21 (Inaudible).

22 MR. DICKERSON: Yeah. And that's
23 the lake.

24 COMMISSIONER PERRY: Okay.

25 CHAIRMAN HERRMANN: What's the

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1 loading on the lagoon?

2 MR. DICKERSON: The lagoon design
3 was about 20,000 gallons per day. The actual flow is
4 somewhere around 10,000 gallons per day. The
5 subdivision is pretty well fully developed. I believe
6 there's about three lots that still need to be built
7 on, that may be built on.

8 COMMISSIONER EASLEY: Well now,
9 you have some overflow from -- from that lake also, do

10 you not?

11 MR. DICKERSON: Yeah. There's
12 some --

13 COMMISSIONER EASLEY: It's follows
14 the same --

15 MR. DICKERSON: Yeah. It all -- it
16 all flows -- the lake -- any discharge from the lake
17 and the lagoon both flow -- you can kind of see a line
18 through here where it -- where it flows through.

19 COMMISSIONER PERRY: Would that
20 possibly be pumped around them now?

21 MR. DICKERSON: No. They're not --
22 they're not going to move --

23 COMMISSIONER PERRY: They're not
24 doing anything to the lake?

25 MR. DICKERSON: -- to the lake, but

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1 they will be moving the effluent from the lagoon.

2 COMMISSIONER EASLEY: Well what --
3 the properties -- the objection are coming from the
4 property on the right there.

5 MR. DICKERSON: Yeah. This --

6 COMMISSIONER EASLEY: By diverting
7 around it, was is there complaint of that?

8 MR. GALBRAITH: They are
9 here and they want to address that.

10 COMMISSIONER EASLEY: Okay.

11 MR. GALBRAITH: So we'll let
12 them speak on it.

13 CHAIRMAN HERRMANN: Anything

14 further?

15 COMMISSIONER PERRY: Do we have
16 any jurisdiction over the lake water?

17 MR. GALBRAITH: No. I don't
18 believe we have any jurisdiction over the lake.

19 CHAIRMAN HERRMANN: I don't think
20 so.

21 COMMISSIONER PERRY: I don't
22 think so either.

23 CHAIRMAN HERRMANN: Okay. Thank
24 you.

25 MR. DICKERSON: Thank you.

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1 CHAIRMAN HERRMANN: We have a
2 request from Bob and Diane Bernard. Yes, ma'am.

3 MS. BERNARD: Mr. Chairman, I'm
4 Diane Bernard. My husband Bob Bernard. And I do have
5 somewhat of a presentation, and I'm not sure whether
6 you would prefer to have me speak at the public comment
7 with handouts. However, I do have some immediate
8 concern -- immediate concerns.

9 First of all, the screen that
10 Mr. Dickerson had -- we are the downstream owners that
11 were never named as the real downstream owners
12 according to the DNR records. It was indicated that
13 someone else was a downstream owner and they really are
14 the secondary downstream owners.

15 So we -- we had no knowledge
16 basically of the processes that DNR were going through
17 at the time of the construction and the operating

18 permit application. And if I could please, ask
19 assistance from Mr. Dickerson to bring the screen back
20 up so that I can give a little bit of an embellishment on
21 what he said.

22 CHAIRMAN HERRMANN: You should be
23 over there.

24 MR. BERNARD: That would be fine.
25 And did you have (inaudible).

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1 COMMISSIONER PERRY: Ron, you're
2 still going to have to move over there. Sit there and
3 watch you make bunny rabbits in the corner.

4 COMMISSIONER HARDECKE: That's why I
5 have to sit by you.

6 MS. BERNARD: We have the last --
7 from what we refer to as the last 50 acres in downtown
8 Millersburg and our property line is right here. And
9 when we moved to this particular property in 1992,
10 this, which is now regarded at Lake Breeze Estates was
11 all farmland. And I have myself looked up some of the
12 aerial topography surveys and -- and the -- this
13 particular man-made lake was there at the time that we
14 moved in.

15 That's what I hear, but the aerial
16 maps go back to '95, so I'm -- I'm not entirely sure
17 how long that particular -- which I would have regarded
18 as a pond at that time, now they call it a man-made
19 lake. And when this particular subdivision was
20 constructed, of course the engineer -- the first
21 documentation in the DNR file is from the engineer

22 who's indicated that the appropriate -- well the
23 layout -- the best layout that they could come up with
24 was in accordance with how the storm water was flowing.

25 And the area that they selected to

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1 discharge from their three-cell lagoon -- what they
2 call the three-cell lagoon, was on our property to the
3 unnamed creek right in here. This is the unnamed
4 creek. And then, the unnamed creek flows down to Owl
5 Creek. And of course Owl Creek is here somewhere. In
6 any event, what -- what has happened to us is that the
7 discharge -- the outlet pipe from the three-tier lagoon
8 is right there.

9 Sorry my hand is shaking so bad.
10 But anyway, it's just below the red dot, approximately
11 52 feet from the property line and in fact, the
12 property line isn't really the fence line. Our
13 property is actually on the other side of the fence
14 line, closer to the red dot.

15 In any event, what -- the
16 indifference to Mr. Dickerson's comment the -- the
17 design flow capacity of this particular lagoon is
18 20,760 gallons a day. It was modified, adjusted flow
19 in August of 2001 to a capacity of 10,999 gallons a day
20 with an actual flow of 10,360 gallons a day.

21 Now, at the granting of the
22 operating permit it was stated that the -- the design
23 flow was 20,760 gallons a day. And despite that, the
24 permit was granted and I'm -- you know, we are just --
25 we don't understand how anybody who works with this all

1 of the time at the DNR would not have even considered
2 what 20,760 gallons a day can do to a property.

3 And of course, this has flowed --
4 this had started flowing across our property with --
5 according to the pictures that you received when I
6 stood before you last time, it has really been
7 assaulting our property. Now, when we met on January
8 the 18th with Mr. Kevin Pace, the -- the lagoon
9 operator, Mr. Dickerson from Compliance and
10 Enforcement, and Mr. Mike Heaton from Macon NERO, the
11 decision was -- there were three options.

12 The number one option that was
13 initially discussed when we sat down at the table was
14 that Mr. Pace said that he would redirect -- he would
15 change the outlet discharge from over here, take it
16 over here and send it down, just like Mr. Dickerson
17 described.

18 The second option was that we said,
19 Well if -- and Mr. Dickerson stated that we were not
20 satisfied with that. That is incorrect. I had
21 concerns about it. And we presented at that time the
22 option that the lagoon operator and the developer could
23 purchase the piece of property that's being assaulted
24 and now has become a huge leech field and is growing
25 bigger and messier every day.

1 And the third option, which really

6 work.

7 I don't think the work will take
8 them more than a couple days to do it, according to
9 Mr. Pace, but there is a process to changing the
10 location of the outfall.

11 MS. BERNARD: I still haven't heard
12 a summary of days. How long will it be before the
13 water stops flowing on my property? I want a figure,
14 not 30 days and 2 days added. I want to know how long.

15 MR. DICKERSON: It depends on when
16 Mr. Pace makes his application. We can't force him to
17 make an application to move the outfall at this point.
18 He's offered to this to resolve this issue. And --

19 MS. BERNARD: So then what you're
20 telling me, sir -- pardon me, Mr. Chairman -- but what
21 you're telling Mr. Dickerson and -- that we still -- we
22 still have the option of filing a lawsuit because this
23 gentleman is known not to do things in a timely
24 fashion?

25 CHAIRMAN HERRMANN: I think if we

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1 would stick with the issue at hand, Ms. Bernard.

2 MS. BERNARD: I understand. But
3 you know, this is --

4 CHAIRMAN HERRMANN: Let's talk
5 about the alternatives that's been presented. And you
6 said you don't have objections, but you have concerns.
7 Can you tell us of your concerns?

8 MS. BERNARD: Yes, I -- it's
9 actually the way the permit process was conducted with

10 respect to the initial permitting process of the
11 construction and operating permit. And I have another
12 presentation that I wish to give in the public comment
13 section, please. But my concerns are, I mean, the
14 pictures that you have seen before, it is obvious that
15 this is not a clean discharge.

16 It is creating -- it is creating an
17 awful lot of, in my view, envir-- has the potential of
18 even more environmental erosion than what is happening
19 on our property because, sir, there -- there is still a
20 lot of construction here that has not occurred. And
21 it's not just three -- the size of three residential
22 lots. It is commercial property. It is duplexes.

23 And I have the -- I have a
24 compilation of the water usage's from water number 9
25 from the beginnings of the subdivision back in '97,

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1 '98. And honestly, the average daily usage of water in
2 December 2005, which was actually, you know, a winter
3 usage, was five -- approximately 5,000 gallons a day
4 water usage. And the erosion that we already have with
5 that type of water usage, to me is -- and the
6 community -- actually the community is very upset about
7 this also. It's not just us, it's the community too.
8 And they're very concerned.

9 Mr. Martin, who lives way down
10 here, who was the one that was initially mentioned in
11 the permit application, he as a little boy -- and this
12 is of course -- this is something that he told my
13 husband, he as a little boy used to fish in Owl Creek

14 and there are no fish in Owl Creek anymore. And that
15 is -- and that is from Mr. Martin. I don't have it in
16 writing, but that's what Mr. Martin said.

17 You see, and right here's the
18 ravine where we contend that -- that the developer
19 could have, somehow used it for his -- his lagoon
20 system. And we contend that he didn't want to use his
21 own property because he probably wanted more
22 residential lots pursuant to the engineer's indication
23 that this layout was the best for the storm water. And
24 we contend that it's not. This is where he could have
25 actually, you know, contained his own sewer system.

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1 CHAIRMAN HERRMANN: Well, that may
2 come down to an engineering judgment.

3 MS. BERNARD: That may be so, but I
4 mean, an engineering judgment as it is, if the engineer
5 lived on the property that we are, I promise you it
6 would not be flowing on his property the way they've
7 done us.

8 CHAIRMAN HERRMANN: Well --

9 COMMISSIONER HARDECKE: Have they
10 not offered you a solution to take that off of your
11 property.

12 MS. BERNARD: This is the only
13 solution that -- Mr. Heaton came up with the idea. And
14 maybe they knew this long before they talked to us
15 about it, but this is what they said they were going to
16 do. They were going to weir and the outlet from here
17 and move it over here and then discharge it over here.

18 And you know --

19 COMMISSIONER HARDECKE: Now, that
20 would be off of your property. Right?

21 MS. BERNARD: And then, we would
22 not be the downstream owners.

23 COMMISSIONER HARDECKE: That's
24 right.

25 MS. BERNARD: But still -- still

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1 Ladies and gentleman, we've got the environmental
2 concern if that's -- if this is what a Clear Water
3 Commission, you know, mission is supposed to be, is to
4 be concerned about the water. And I have other
5 pictures that I'll hand out later.

6 And I definitely -- we definitely
7 want this water off our property. It has totally
8 changed our entire life.

9 CHAIRMAN HERRMANN: The owner is
10 suggesting a solution of removing the flow of water
11 from this property and directing it as you describe.
12 Correct?

13 MR. DICKERSON: That's correct.

14 CHAIRMAN HERRMANN: And he is
15 supposed to initiate a construction permit application?

16 MR. DICKERSON: Yes. That's
17 correct. He's indicated that he's working with Bill
18 Marshall of Marshall Engineering. They're the ones who
19 actually did the original design. And they're working
20 with them to put together the construction permit
21 application and submit that for the construction permit

22 to move the outfall.

23 CHAIRMAN HERRMANN: Okay.

24 MS. BERNARD: Mr. Chairman, may I
25 have permission to speak later too, please?

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1 CHAIRMAN HERRMANN: Yes, ma'am.

2 MS. BERNARD: I appreciate that,
3 thank you.

4 CHAIRMAN HERRMANN: Okay. Okay.
5 Legal report. Anything, Tim?

6 MR. DUGGAN: Bill had
7 sent me an email concerning the Bernard situation. And
8 I have nothing to add to what you've already heard.

9 CHAIRMAN HERRMANN: Okay. Then
10 director's update, budget and legislative discussion.

11 MR. GALBRAITH: Thank you,
12 Mr. Chairman. On legislation I might let you know that
13 Senate Bill 1165 has been filed by Senator Clint.
14 Senate Bill 1165 is a two-year extension on water
15 pollution control permit fees for two years. And it
16 calls for a joint interim committee to look at water
17 pollution control fees and report back to the Governor
18 and the General Assembly.

19 I don't know by what date, but --
20 in other words extending our fees and then giving an
21 interim committee time to study the issue and help us
22 come up with a legislative solution for the next five
23 years.

24 CHAIRMAN HERRMANN: Is that
25 extending the present fees or the consideration for new

1 fees?

2 MR. GALBRAITH: That's just
3 extending the present fees. They were to have
4 sunsetted December of 2007.

5 CHAIRMAN HERRMANN: Yeah.

6 MR. GALBRAITH: That moves
7 that date out to December 2009, so certainly plenty of
8 time.

9 COMMISSIONER PERRY: And what is
10 the (inaudible).

11 CHAIRMAN HERRMANN: The fee
12 subcommittee is still active or stakeholders?

13 MR. GALBRAITH: Yes. And
14 I -- I assume that at some point the joint interim
15 committee will want to hear from some of the people who
16 assisted us in our fee advisory group, yes.

17 CHAIRMAN HERRMANN: Okay.

18 MR. GALBRAITH: Okay. Did
19 you have a question?

20 COMMISSIONER PERRY: What is the
21 feeling of the department about that?

22 MR. GALBRAITH: Well I -- to
23 be honest, I -- this is exactly where I thought we
24 would be this year. It's just too -- it's too
25 important an issue and too complicated to do quickly.

1 And I think we would benefit very much from having the
2 input and the attention of a legislative committee. So
3 I'm very happy.

4 COMMISSIONER PERRY: And once
5 again, I think use of your stakeholder groups is
6 commendable.

7 MR. GALBRAITH: Well, thank
8 you. Thanks. I think it leads to much more successful
9 outcomes. On other legislation, the drinking water
10 primacy fee was introduced. That is Senate Bill -- I
11 don't have it here. But it proposed a 65 percent
12 increase in drinking water primacy fee. That's a fee
13 that consumers pay.

14 It's past -- it's collected by the
15 drinking water systems and then remitted to the
16 department. The current -- the current fee is now --
17 ranges from .66 cents to \$2.00 per person -- or per
18 connection per year. That will, obviously, go up to
19 about \$1.12 to \$3.32 if this legislation is
20 successful.

21 It's been heard at committee.
22 Unanimous support for the bill by stakeholders in
23 the -- in the committee of those who testified. So
24 that's very good news for the drinking water side.

25 Some other legislation that may be

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1 of interest --

2 COMMISSIONER PERRY: What are
3 they going to use that fee for?

4 MR. GALBRAITH: I'm sorry?

5 COMMISSIONER PERRY: What are
6 they -- what do they use the primacy fee for?

7 MR. GALBRAITH: It's to --
8 it's to basically run the program in much the same way
9 that -- you know, they have, you know -- they have a
10 state fee that have federal grant funds and a little
11 bit of general revenue. So it's about 40 percent of
12 their overall operating budget, without which we
13 wouldn't have a delegated program.

14 COMMISSIONER HARDECKE: And who pays
15 that?

16 MR. GALBRAITH: It's charged
17 directly on your -- on the water bill. If you're
18 (inaudible) -- any kind of a, you know, public drinking
19 water system. Private landowners with their own
20 private wells don't pay that.

21 House Bill 1721 was a bill that was
22 introduced that would require the department to refund
23 annual fees for water pollution control permits or
24 renewals that were not done within statutory deadlines.
25 That legislation has been withdrawn although I think we

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1 need to take the message there that -- that you know,
2 late permits are an issue and we need to address that
3 with our -- with our stakeholders.

4 COMMISSIONER PERRY: Didn't we
5 pass something about that?

6 MR. GALBRAITH: Well, we --
7 in statute now the application fee is refundable if we
8 don't issue the permit within statutory deadlines. But

9 in addition to application fees, there's an annual
10 permit fee for every permit holder. This was going --
11 this was addressed -- targeting those annual fees. So
12 it would have been over and above what we're already
13 refunding.

14 COMMISSIONER PERRY: Annual fee
15 is refunded under what condition?

16 MR. GALBRAITH: The
17 application fee is refunded if the permit is not issued
18 within --

19 COMMISSIONER PERRY: Within so
20 many days. Right.

21 MR. GALBRAITH: Right.

22 Statutory --

23 COMMISSIONER PERRY: And this
24 bill was to cover, did you say the application fee?

25 MR. GALBRAITH: Annual fees.

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1 COMMISSIONER PERRY: Annual fees.

2 Okay. The --

3 MR. GALBRAITH: Under what

4 conditions --

5 COMMISSIONER PERRY: -- fee is
6 under the permit. And if you already issued the permit
7 in a timely manner (inaudible), annual fees, what are
8 they talking about a refund for?

9 MR. GALBRAITH: Well -- and
10 it was a little confusing. But let's say -- let's say
11 the application came in for renewal. Okay? So they
12 already had a permit and weren't able to get the permit

13 out within a 180 days or 60 days or whatever.

14 COMMISSIONER PERRY: Okay. So
15 it's a renewal permit, not after a certain time?

16 MR. GALBRAITH: Well, that -- it was unclear.
17 I mean, it left a lot of questions like that. I don't
18 know how we would have addressed a brand new
19 construction permit for example. That might have --
20 you know, that would have posed some problems.

21 There is a CAFO Bill, Senate Bill
22 591 that includes some time lines regarding all CAFO
23 applications. I don't know if the department has taken
24 a position on that at this time. There is a fund sweep
25 bill, Senate Bill 7-- or 917 that would give the

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1 General Assembly the power to move the balances of
2 state funds into general revenue under certain
3 circumstances.

4 There are several -- there's a bill
5 that the department is in support of, Senate Bill 1081,
6 innovative technology for waste water treatment. That
7 basically is a -- provides a mechanism for bonding to
8 help encourage or promote innovative waste water
9 treatment technology.

10 Basically, if somebody will -- will
11 do an SM-- you know, not a SBR an MBR plant or
12 something that's considered innovative, but maybe a
13 little bit untested, the bond is out there to make sure
14 that if something goes wrong and there is a water
15 quality problem, there's money available to the system,
16 the municipality in particular, to fix the problem.

21 trying on some things.

22 COMMISSIONER PERRY: I don't
23 think we need to bring up that geezer word again.

24 MR. GALBRAITH: For the
25 record can you spell that? I'm just kidding.

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1 COMMISSIONER PERRY: You
2 mentioned the CAF0 bill. That made my mind click on
3 something else that EPA recently extended the time to
4 get in compliance with nutrient management plans to
5 issue because they hadn't completely issued their new
6 rules to stay in line with the Second Circuit decision.
7 Which gets me all back to the question of this
8 statement to update our CAF0 rules. Are we still
9 waiting for EPA to come out with some final rulings?
10 And do you have any idea when we are going to face
11 that?

12 MR. GALBRAITH: Yes. We are
13 waiting. We have to -- we are waiting for the EPA
14 determination or guidance pending the Second Circuit or
15 the Second Court's decision. We had -- we have been
16 waiting almost a year now. I guess it's been more than
17 a year.

18 COMMISSIONER PERRY: I
19 understand. And they extend --

20 MR. GALBRAITH: But I feel
21 like we would be spinning our -- we're potentially
22 spinning our wheels, we and this Commission will be
23 spinning our wheels if we try to anticipate EPA on
24 this.

1 So they haven't issued their final on this? Then what
2 does this CAFO rule have to do with, the Senate Bill
3 591?

4 MR. GALBRAITH: I don't -- I
5 don't think they're related. I just wanted to give you
6 a quick update on the Clean Water forum. At our last
7 meeting we presented to you our -- our regulatory
8 agenda for 2006 and we have formed a number of advisory
9 groups, or stakeholder groups on such issues; as the --
10 as the 303(d) list as we talked before; our
11 anti-degradation policy, which is another settlement
12 agreement issue that we have to work out by April of
13 2007; wetlands, unclassified; streams, we have a work
14 group on that; water quality review sheets; our policy
15 on lagoons. One on continuing authorities, and then
16 several on other issues not really -- we have a couple
17 drinking water ones and -- and one on the personnel and
18 resources and fin-- funding and resources, I guess I
19 should say.

20 So those have all been scheduled.
21 You can feel free to participate. I know, Tom, you're
22 participating in a couple of those. And we certainly
23 welcome the input of the -- and the participation of
24 the Commission.

25 Another thing that I covered last

1 meeting that I told you I'd follow-up on, I did give
2 you a permit report on our -- how well we're doing on
3 issuing permits in a timely way. And I -- I said at
4 that time that I was going to try to come up with a
5 better, more understandable format. And we have been
6 working on that pretty hard for two months. I don't
7 have something to hand to you today, but I -- in fact,
8 I just got these numbers this morning. They're very --
9 they're revealing in a way that I want to share with
10 the Commission.

11 It's kind of a good news/bad news
12 situation.

13 (End of Tape 3, Side A)

14 (Start of Tape 3, Side B)

15 MR. GALBRAITH: We issued --
16 for all our permits that have to get done within 60
17 days, we issued over 2,400 on time. And of the 157
18 that were issued past that -- or -- yeah. 157 were
19 issued beyond that date. Okay. So 2,400 permits on
20 time. 157 issued not on time, if you will. The bad
21 news is about 200 are still backlogged as of December
22 31st. This is just operating permits that have to be
23 issued in 60 days. Of those 200 that are backlogged we
24 ran -- I ran an aging report, three-fourths of them are
25 over a year old. So --

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1 COMMISSIONER PERRY: Do you know
2 what the reason is for that? Are those complicated
3 sort of permits?

4 MR. GALBRAITH: Well,

9 time when we weren't even tracking that. So we've
10 intended to improve.

11 MR. GALBRAITH: Well, it's
12 -- I -- I tell you what, Randy and Refaat have
13 done a lot of work, and also Kris Ricketts, have
14 really done a lot of work trying to get our arms around
15 -- we have several databases and we've got 50 people
16 entering data all over the state. And they've done a
17 good job of really getting our arms around that. So I
18 really want to commend them.

19 COMMISSIONER PERRY: That's very
20 good.

21 MR. GALBRAITH: I'll pass
22 that along. Thank you.

23 CHAIRMAN HERRMANN: You mentioned,
24 (i ndi scerni ble) and some of these other stakeholders
25 groups dealing with subjects that were mandated by the

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1 court settlement. As I told you at the unclassified
2 streams and wetlands, those two items were not part of
3 the court settlement. Those were included in an
4 infamous September 9th, 2000 letter, which said it may
5 be something that EPA may want to look at in the future
6 and I pointed it out at that time. And I'll emphasize
7 it to this group now that that is not part of the court
8 settlement, court direction.

9 MR. GALBRAITH: Okay. I --
10 and I may be wrong on this and -- but my -- my
11 understanding of the legal -- and this is what I'm
12 hearing from EPA -- their understanding of the legal

13 interpretation of that is because that letter is
14 incorporated into that lawsuit that it becomes part in
15 parcel of and equivalent to any of the listed items in
16 the settlement agreement. And that -- that may be
17 wrong. That's the -- that's the direction I'm going off
18 of.

19 CHAIRMAN HERRMANN: Well, that's --
20 that's the reason that I suggested that the
21 participants in the group get a copy of Pages 27 and
22 28 --

23 MR. GALBRAITH: Okay. I'll
24 do that.

25 CHAIRMAN HERRMANN: -- of that

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1 September 9th letter, wherein EPA says they may want to
2 look at those in the future and consider the
3 application of general criteria. They didn't say they
4 were going to. They didn't say they intend to. They
5 said they may.

6 MR. GALBRAITH: Okay.

7 CHAIRMAN HERRMANN: And to me
8 that's permissive.

9 MR. GALBRAITH: That's
10 different than shall.

11 CHAIRMAN HERRMANN: Or whatever the
12 legal terminology is.

13 MR. GALBRAITH: Okay.

14 That's something we should take a look at. Thank you.

15 COMMISSIONER HARDECKE: So were you
16 suggesting that by virtue of that letter being

17 mentioned that the entire letter became mandatory?

18 MR. GALBRAITH: Right.

19 Because all of the deficiencies noted in the letter are
20 incorporated into the -- into the lawsuit and therefore
21 become --

22 COMMISSIONER PERRY: See you just
23 said deficiencies. Is that the entire letter or just
24 those parts that were --

25 CHAIRMAN HERRMANN: I disagree.

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1 MR. GALBRAITH: Okay.

2 COMMISSIONER HARDECKE: It would
3 have only been the portions that were specified in the
4 lawsuit.

5 CHAIRMAN HERRMANN: Yeah. In
6 the -- in the court settlement and the direction given
7 from the court. They mention specific items and they
8 didn't reference in their direction, "these will be
9 accomplished. This will be accomplished." They didn't
10 mention these "maybe" items.

11 MR. GALBRAITH: Okay. Well
12 let's -- let's make it a point then to answer this
13 question once and for all at our May meeting. Let's
14 get the documents and highlight the relevant portions
15 and let's -- we'll do that one way or the other.

16 CHAIRMAN HERRMANN: Did you get a
17 copy of my dissertation on that subject? Okay.

18 MR. GALBRAITH: I haven't
19 memorized it yet I'm sorry to say, Mr. Chairman.

20 CHAIRMAN HERRMANN: I don't expect

21 you to. It's three and a half pages long.

22 COMMISSIONER PERRY: Is that on
23 that?

24 CHAIRMAN HERRMANN: Huh?

25 COMMISSIONER PERRY: Is that

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1 dissertation that
2 you -- was that --

3 CHAIRMAN HERRMANN: One of them.

4 COMMISSIONER HARDECKE: That was
5 just one of them.

6 COMMISSIONER PERRY: Because
7 that's not the one I'm thinking of.

8 CHAIRMAN HERRMANN: Okay. Did I
9 send you a copy of the latest?

10 COMMISSIONER PERRY: Yeah. I
11 think so.

12 CHAIRMAN HERRMANN: Okay. Well,
13 that's on classified streams.

14 COMMISSIONER PERRY: That's the
15 one.

16 CHAIRMAN HERRMANN: Okay. It can
17 be summarized in two words.

18 COMMISSIONER PERRY: Is geezer
19 one of them?

20 CHAIRMAN HERRMANN: Male bovine
21 excreta.

22 COMMISSIONER PERRY: Oh, yeah. I
23 know what that means.

24 MR. GALBRAITH: That was
25 three. It's Latin.

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1 CHAIRMAN HERRMANN: Military
2 terminology it's only two.

3 MR. GALBRAITH: As I
4 mentioned before, there is no -- there is no
5 legislation on the 303(d) listing. That would take a
6 legislative change. I don't know that there will or
7 won't be. I don't -- I don't know that we're actively
8 seeking a sponsor for that, but we are talking to some
9 stakeholders who I think are. I think there's a decent
10 chance that there will be legislation. So I would just
11 encourage the Commission to think about --

12 COMMISSIONER PERRY: Are you
13 talking legislative change on whether or not the 303(d)
14 list is done according to rule-making?

15 MR. GALBRAITH: Correct.

16 COMMISSIONER PERRY: And it would
17 probably -- if I understand it from the last meeting
18 that there's not an EPA requirement that it be done
19 under rule-making; is that also correct?

20 MR. GALBRAITH: EPA does not
21 require that. That is correct.

22 COMMISSIONER PERRY: Could we
23 done something a little bit more affirmative and ask
24 staff to investigate what they think would be good
25 leg-- would be a good process in its place?

1 MR. GALBRAITH: Yeah.
2 That's -- that would be fine. I think another
3 thing that you might think about is, you know, if there
4 was -- if there was some formal Commission support for
5 that general concept, then if legislation were
6 introduced, we would be able to enter that into, you
7 know -- we would be able to --

8 CHAIRMAN HERRMANN: I think we
9 should --

10 MR. GALBRAITH: Pursuant to
11 your review of the legislation.

12 COMMISSIONER PERRY: At this
13 point we don't have anything in front of us.

14 CHAIRMAN HERRMANN: I think the
15 Commission's good to have a --

16 MR. GALBRAITH: That's true.

17 COMMISSIONER PERRY: And I would
18 be happy to say that we'd like -- okay. You put in a
19 motion, I'm not speaking in sentences. It looks bad.
20 Okay. I'll put into a motion that I am interested to
21 know what language is being considered.

22 MR. GALBRAITH: Okay.

23 COMMISSIONER PERRY: And if staff
24 can present us with that, I think we as a Commission,
25 would be willing to express an opinion as to whether or

1 not we are supportive.

2 MR. GALBRAITH: Okay.

3 COMMISSIONER PERRY: But we have

4 to know what it is before we say --

5 CHAIRMAN HERRMANN: I might suggest
6 in a relatively limited time of the remaining portion
7 of the session, legislative session, that it might be
8 beneficial for the staff or the department to have an
9 expression of support from the Commission to eliminate
10 that provision, which is peculiar. As Leo Alderman
11 told us last meeting, only to Missouri and three other
12 states in the --

13 COMMISSIONER PERRY: Okay.

14 CHAIRMAN HERRMANN: -- entire
15 country --

16 COMMISSIONER PERRY: So I guess
17 what I have to do is make this a little bit more
18 affirmative in expressing that it is likely that we
19 would be more supportive of such a statutory change?

20 MR. GALBRAITH: I think you
21 could -- if -- I understand your concern about the
22 language. And what you might want to do is express
23 support for the concept pending your ability to review
24 the language and advise the Chairman of your -- you
25 know, if you find an acceptable --

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1 COMMISSIONER PERRY: It seems
2 like -- your implication was that if we were supportive
3 of such language it might also carry some weight in the
4 passage of such a bill.

5 MR. GALBRAITH: It wouldn't
6 hurt and I think it would help lend some weight.

7 COMMISSIONER PERRY: Okay. If

8 that were to be so, if something were to come up before
9 the next meeting, which is -- our next meeting I think
10 is right before the very last week of the legislative
11 session. Would that not be a reason to have a brief
12 conference call where you could send the information
13 out. You could notice a conference call if anybody
14 wanted to talk to us.

15 MR. GALBRAITH: Yes.

16 COMMISSIONER PERRY: But we could
17 then, issue a statement of support.

18 MR. GALBRAITH: Okay.

19 COMMISSIONER PERRY: And should
20 that be a motion?

21 CHAIRMAN HERRMANN: Yes.

22 COMMISSIONER PERRY: I'd like to
23 take all that and put it into a motion.

24 MR. GALBRAITH: So noted.

25 CHAIRMAN HERRMANN: Do I have a

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1 second?

2 COMMISSIONER EASLEY: Second.

3 CHAIRMAN HERRMANN: Thank you. Any
4 discussion? Hearing no discussion the motion passes.

5 MR. GALBRAITH: Thank you.

6 CHAIRMAN HERRMANN: Thank you.

7 That brings us to public comment and correspondence.

8 Anyone? Ms. Bernard. Anyone else's?

9 MS. OVERHOFF: I have some
10 cards here.

11 CHAIRMAN HERRMANN: We better get

12 Ms. Bernard first.

13 MR. GALBRAITH: We've got
14 some cards here.

15 CHAIRMAN HERRMANN: Okay. Ms.
16 Bernard.

17 MS. BERNARD: Thank you,
18 Mr. Chairman and Commissions. I really appreciate this
19 time spent with you. I'm speaking on the terms of
20 being a constituent. Constituents are the heart beat
21 of this country. And from that venue I would like to
22 give a perspective of what we perceived happened in the
23 issuance of the permits for the Lake Breeze Estates.
24 And I'd like to read to you a presentation if you don't
25 mind. It will make things a little faster.

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1 This is regarding the Missouri
2 Department of Natural Resources domestic waste water
3 system permitting process, waste water erosion and
4 effluent slime leech field on Bernard farm, formerly
5 pristine pasture ground that had no standing water
6 caused by Lake Breeze Estates subdivision domestic
7 lagoon, Millersburg, Missouri, DNR lagoon permit
8 MO-0120995.

9 The news that the Lake Breeze waste
10 water discharge is planned to be rerouted away from our
11 pasture does not bring closure to our concerns about
12 the DNR's current domestic waste water permitting
13 process. We request that the Clean Water Commission
14 and the DNR be aware of some of the impacts thrust upon
15 us and a few of our hard earned perceptions with a view

16 to improving customer relations and understanding the
17 reality of what happens in the field when a permit is
18 granted.

19 As you know we were not named as
20 downstream owners in the Lake Breeze Lagoon permit
21 applications for construction November 17, '97 or
22 operating June 16th, 2000 permits. But then were told
23 by the DNR and several of the DNR staff have told us
24 this including the Director Childers on February the
25 2nd of this year that we could file a civil suit to

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1 address our objections. And Mr. Childers called me
2 personally to tell me that.

3 The DNR stated, and it's printed in
4 the Fulton Sun January the 6th, 2006, that a protest
5 from the Bernard's would not have made any difference.
6 And also just because the downstream landowner protest,
7 we can't deny a permit. Those statements sent a chill
8 throughout our rural community. Accurate or not the
9 interpretation was that the DNR can trump property laws
10 in its pursuit to accommodate development.

11 The media coverages from the Fulton
12 Sun, Lagoon Run Off Causing Stink With Neighbor; KOMU
13 TV coverage from Callaway, a Stinky Situation; and the
14 Millersburg Cocklebur Chronicle; It ain't, it just
15 ain't neighborly, created a stir in Millersburg.
16 People are wondering if their properties are safe.

17 Per DNR -- and I'm talking to you
18 about the chapter regulations -- 10 CSR 20-8.020 11A in
19 general, to avoid local objections, the waste water

1 considered for the lagoon, which Mr. Childers on
2 February the 2nd, 2006, asked me to document. And I
3 have the documentation here for you.

4 Instead with the lagoon design flow
5 capacity of 20,760 gallons per day discharging next to
6 our property line, our property was doomed from the
7 start. The water on our property has tested beyond the
8 limits of the DNR. The BOD result is 3,300 milligrams
9 per liter. The total suspended solids result was 4,900
10 milligrams a liter.

11 Despite the explanation by the
12 engineer published in the Fulton Sun that it was the
13 best place based on the layout of the land, discharging
14 the waste water onto our property turned out not to be
15 the optimal option.

16 We may have fallen prey to a
17 developer and lagoon operator who abandoned the golden
18 rule in their treatment of us. But we feel violated
19 that the DNR unwittingly set the stage against us. And
20 it was no steward in its own agencies vision and
21 mission in its handling of this permit.

22 By evidence and demonstration we
23 feel there is a lot of room for the DNR to be proactive
24 to divert the type of crisis we experienced right from
25 the get go instead of dealing with problems years after

1 the initial permits are granted.

2 And lastly, I'm very -- this is
3 totally regrettable and I really need to know that this

4 type of -- this -- this attitude is not representative
5 of everybody who is working at the DNR. We are
6 appalled that a top DNR staff member stated we were
7 shopping for sympathy in our pursuit to find resolution
8 to the crisis on our land. I have also produced this
9 email for you.

10 If shopping for sympathy is the
11 reality of how the DNR regards the focused efforts by
12 persons seeking restoration of their property rights
13 prior to filing a lawsuit, Missourians who cross paths
14 with the DNR are in deep trouble.

15 If the DNR good will intends "It's
16 important to us that everyone's voice is heard by
17 Mr. Scott Totten, and "Missourians have a right to
18 expect good customer service from us," by Mr. Doyle
19 Childers, which were broadcast in the DNR news release
20 of number 479 of November 21, 2005, carry any weight.
21 The DNR needs to digest and practice its own words.

22 We request that in the future the
23 DNR provide us with all public notices considering --
24 concerning all and -- any and all DNR permits
25 pertaining to Lake Breeze Estates. And I would like

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1 written assurances from the DNR that what Mr. Dickerson
2 has indicated to us that it is put in writing and that
3 we received that letter post haste.

4 CHAIRMAN HERRMANN: Thank you. I
5 might say that all permits are put on public notice
6 prior to their approval. Thank you. I'm sure this
7 permit in 1991 or whenever it was, was no exception.

8 Richard you were around in those days. Mr. Arnold?

9 MR. ARNOLD: Thank you. My name is
10 Ken Arnold. I formerly worked for the department for
11 about 30 years in this aspect. And I -- unfortunately
12 I'd have to agree that this is not an uncommon
13 occurrence. It happens routinely within the department
14 and it's something that should be addressed in terms of
15 allowing effluent to run onto a farm property without
16 any -- really looking into the impacts that it has on
17 the landowner. I know there's reason behind it, but
18 I -- it is a common occurrence and not everyone speaks
19 up like she has to tell you about it.

20 CHAIRMAN HERRMANN: I think it's
21 been noted that it's an unacceptable occurrence and
22 people in the department have been made aware of it.
23 We can't do that in the future and I will say that I'm
24 sure it was public noticed and that's the time when
25 people should file an objection, is when the notice is

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1 posted for impending permit action.

2 COMMISSIONER. PERRY: Where is that notice
3 posted?

4 CHAIRMAN HERRMANN: In the local
5 papers. Is that right? Richard?

6 MR. LAUX: City hall post office.

7 CHAIRMAN HERRMANN: City hall, post
8 office.

9 COMMISSIONER. PERRY: And is there a neighbor
10 notification requirement? Richard? Does anybody know
11 the answer to that?

12 MR. GALBRAITH: Bruce, can
13 you speak to that?

14 MR. MARTIN: Bruce Martin with
15 Field Services Division. There is no requirement in
16 the regulation of notification of downstream
17 landowners, however it's policy (inaudible) policy of
18 the agency to do that. And (inaudible) depends on the
19 applicant to provide us the name of that downstream
20 landowner (inaudible) specifically (inaudible).

21 COMMISSIONER PERRY: So then he didn't -- he
22 didn't do something that was --

23 MS. BERNARD: Ms. Perry, that is
24 correct. The developer didn't -- I have all this
25 documentation here if you would like to look at it.

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1 But no, we were not named in the construction permit.
2 And the only time that Mr. and Mrs. Martin appeared as
3 mentioned as possible downstream owners was when
4 Mr. Fork put it down on his own forms. But the
5 developer himself didn't -- did not put it down on the
6 construction application nor the operating application.

7 And even when they had the
8 application for the -- a new operating permit because
9 the old one had expired June the 15th, 2005, Mr. Heaton
10 advised me that when the application for a new
11 operating permit was submitted by the lagoon operator
12 at the beginning of June, that our name still was not
13 downstream owners. And it -- I mean it's been years
14 and he stands at that other side of the fence and he
15 knows what's going on on our property.

16 COMMISSIONER. PERRY: That might be part of
17 your damages for him. My other question of the
18 department: Is there -- in reviewing these permits, is
19 there any evaluation of site location? Is there any
20 discussion? My question is as an owner or developer
21 seems to be making his own determinations of what's
22 most efficient. And I wonder why in the process when
23 DNR has much more expertise than many developers may
24 have that there isn't some sort of discussion if
25 they're mapping something out and showing you where it

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1 is to be.

2 CHAIRMAN HERRMANN: It's -- it's --
3 excuse me for interrupting, but it's not the developer
4 who's submitting this. It is the -- the developer's
5 engineer. And before the department can accept a
6 planning document or plans, they have to see the seal
7 of a registered professional engineer in the State of
8 Missouri affixed to them.

9 COMMISSIONER PERRY: And would an engineer
10 not have -- have to do that, take a look at what would
11 make the most sense?

12 CHAIRMAN HERRMANN: Certainly he
13 should have. If fact that's --

14 COMMISSIONER PERRY: In this particular
15 case, that would --

16 CHAIRMAN HERRMANN: She was
17 referring to 10 CSR 20-8, and that's the design
18 standards. And that's the one that stipulates what the
19 engineer should and must consider for an approved

20 facility plan.

21 COMMISSIONER PERRY: So it looks like some
22 of this is other people that have let you down beyond
23 the department, where --

24 MS. BERNARD: Yes, ma'am.

25 COMMISSIONER PERRY: -- the owner let you

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1 down by not -- the developer let you down by not
2 putting your name down. The engineer let you down by
3 not doing his job. We don't control that.

4 MS. BERNARD: I know that ma'am,
5 but it was just a culmination of everything.

6 COMMISSIONER PERRY: I see that.

7 MS. BERNARD: An absence of
8 everything. That means so much to everybody. I mean
9 just because --

10 COMMISSIONER PERRY: I don't doubt that.

11 MS. BERNARD: -- I would have
12 preferred to have met you under other circumstances.
13 And your handouts, if I may -- the handouts are what is
14 presently existing on our property. There are also the
15 media letters and as well the email, in the back,
16 concerning the -- the issue that I'm extremely
17 concerned about as is many people.

18 CHAIRMAN HERRMANN: Thank you --

19 MS. BERNARD: Thank you,
20 Mr. Herrmann. I really appreciate it.

21 CHAIRMAN HERRMANN: -- for bringing
22 that to our attention. We appreciate that.

23 MS. BERNARD: I will be back to

24 find out -- do you mind?

25 CHAIRMAN HERRMANN: No. Not at

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1 all.

2 MS. BERNARD: Well, I need to make
3 sure that this is something that is not glazed over,
4 sir.

5 CHAIRMAN HERRMANN: Well, that's
6 the function of this Commission and that's the reason
7 we have this agenda item, is people like yourself who
8 have difficulty or have a concern, can bring it before
9 this group, and hopefully we can provide a solution or
10 relief.

11 MS. BERNARD: And I do have an
12 understanding that Mr. Dickerson is going to provide me
13 with a letter. Thank you, Mr. Mohammadi. Thank you
14 everyone.

15 CHAIRMAN HERRMANN: Thank you. We
16 have a request from Mike Sloan to address the
17 Commission. Swiss Meat and Sausage Company of Hermann,
18 Missouri.

19 MR. SLOAN: Hello. My name is Mike
20 Sloan from Swiss Meat and Sausage Company. And thank
21 you for allowing me to appear here. Your plate is
22 pretty full. It looks like you might need a platter
23 the way things are going.

24 CHAIRMAN HERRMANN: Of sausages.

25 MR. SLOAN: Just a little bit about

1 or business. It's a family business. My dad started
2 the business in the '60s. It's a small family business
3 in east central Missouri, Gasconade County.

4 And my problem is not an
5 enforcement action. I'm not here because of any type
6 of enforcement action. And I'm not here because of an
7 environmental non-compliance issue. I'm here because
8 of a regulatory wording concern.

9 And just a little background on our
10 business. Like I said my dad started the business in
11 the '60s. Through the '70s and '80s we diversified our
12 business. Through the '90s we continued the
13 diversification. As the numbers of farmers and farmers
14 would decrease, that effected our business, so part of
15 our diversification was adding a retail store where we
16 were selling our homemade sausage meat products.

17 And part of this diversification
18 included upgrading of our current anaerobic lagoon
19 waste treatment system in the early '90s, which was
20 frequently failing. And we wanted to get away from the
21 lagoon sitting out in front of our building. The look
22 that we wanted and the look that we now have is a nice
23 paved parking lot, split-rail fence, green grass and an
24 American flag. We didn't want another lagoon out to
25 the front where we have walk-in trade coming in. We

1 host about 20 to 30 tour buses a year for sausage
2 tastings and sales.

3 So our answer to the anaerobic
4 lagoon was a subsurface drip irrigation system. Now
5 subsurface drip irrigation systems have been around for
6 10 or 15 years. It's only recently that they've been
7 applied to small flow food processing businesses such
8 as mine, which is about 800 gallons a day. With a
9 subsurface drip irrigation system it doesn't fit
10 anywhere.

11 What I mean by that is in talking
12 to Mr. Galbraith earlier there's two types of permits;
13 site specific, which is unrealistic for my business at
14 \$3,500 -- up to \$3,500 a year, when I've been paying
15 \$150 a year. So just recently within the last 30 days
16 I've been told verbally that no, you're not going to go
17 into the site specific permit. That's good news.

18 So that means that I have to fit
19 into the general permit. But my waste treatment system
20 is a square -- square pig -- square peg trying to get
21 into a round hole. It doesn't fit all the requirements
22 of the general permit and I'm having trouble meeting
23 some of those regulations. And one of the rules state
24 that use of new or innovative treatment processes is
25 encouraged under 10 CSR 28.140 Section 5V. And lack of

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1 inclusion in the rule does not preclude their use.

2 Well that's kind of where I am.
3 Now, that rule was written 1979, so that's well within
4 these guidelines. When -- when the -- when my system
5 was installed in 1995 and I was issued a permit in '95
6 or -- I believe, and it was up in '97. My permit was

7 up in June of -- or July 1997. And I'm wanting to get
8 it renewed and that's the process that I need to get
9 done, to have my permit renewed.

10 And it's been several years --

11 COMMISSIONER PERRY: When was your permit --

12 MR. SLOAN: '97. Right?

13 UNIDENTIFIED SPEAKER: That's

14 right.

15 MR. SLOAN: 1997. And this is
16 going on for some time and I needed to get it taken
17 care of.

18 COMMISSIONER HARDECKE: It has not
19 been renewed since '97?

20 MR. SLOAN: No. And one of the --
21 I was -- I was -- I thought I was always in compliance.
22 Well, I'm still in compliance, but in 2003 things
23 started to heat up with letters from the DNR. And the
24 first correspondence I had was in 2003 that I needed to
25 obtain the site specific. And when I found out that

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1 the \$3,500 was just not going to work for me -- through
2 '93 of '03, '04, '05, we've been having a lot of emails
3 and -- and meetings.

4 In fact, we had a meeting last
5 week, Wednesday, a week ago today in this very building
6 with myself; Mr. Ken Arnold, who is an environmental
7 consultant; and Jim Froelker, who is a DNR ombudsman; and
8 a representative from the Department of Agriculture was
9 here; and a representative from Senator Frank Barnett's
10 office was also present; and two officials from the

15 CHAIRMAN HERRMANN: What's your
16 primary treatment before the drip irrigation disposal
17 system?

18 MR. SLOAN: It's all under ground
19 and it goes into -- it goes into -- the first is a
20 grease trap. I think it's a -- well, here.

21 CHAIRMAN HERRMANN: Okay. Grease
22 trap then a septic tank?

23 MR. SLOAN: Grease trap and then
24 the two pre-treatment tanks. And then an under ground
25 water -- or it's an aerator system.

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1 CHAIRMAN HERRMANN: Okay.

2 MR. SLOAN: Turns it. And then it
3 goes to another holding tank. And then from there it's
4 pumped out to two fields, two alternate fields. One
5 field has 8,000 square feet of drip irrigation lines.
6 And the other field has 10,000 square feet of drip
7 irrigation lines. So I can manually adjust which field
8 I want to go to. One of the requirements in the
9 general permit is that I can't -- or according to the
10 regular general permit is you can't apply during wet or
11 frozen conditions.

12 Now I can see that happening if I
13 had an anaerobic lagoon system where there's snow and
14 there's ice and the -- if you have a lagoon it's going
15 to come out and just spread out. But when I'm
16 distributing those 18,000 square or -- 18,000 square
17 feet of drip irrigation lines six to twelve inches
18 below ground, it's not going to surface. It's under
19 the ground. It's all under ground.

20 I mean I got a lot of specs of
21 what, you know, testing and so forth. The drip
22 irrigation field consists of four-tenths of an acre,
23 six to twelve inches below the soil. I have three to
24 four days of storage capacity in case something would
25 fail. Nitrogen limits is another problem I had at the

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1 meeting, according to the general permit. And
2 that's -- that's what I got.

3 I don't know. I'm just having
4 concern, but I'm hopeful that it will get, you know,
5 resolved. And I think we're having some good movement,
6 good conversation on this issue. But like I said, I
7 don't want to be singled out because there's others
8 who -- who would probably look at this system such as
9 this and in -- as in the case earlier with Mr. Sears,
10 with a lagoon, I really feel for people. He's
11 stressed.

12 There is other people who are like
13 that and this would be a system that's new and
14 innovative. Not for households because it's been
15 around for households for 15 -- 10, 15 years. But as
16 an industry it's something that should be looked at,
17 but the rules don't -- are not friendly to it. So I'm
18 back to the round hole square pig thing.

19 COMMISSIONER PERRY: The rules
20 are our job.

21 CHAIRMAN HERRMANN: Yeah.

22 COMMISSIONER PERRY: And that's

23 why I'd like to have the department check into this a
24 little bit. If this is sort of a technology that we
25 need to be encouraging a bit more, we need to know

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1 that.

2 CHAIRMAN HERRMANN: For your
3 information it is not a new technology in industrial
4 applications. It's been around for a lot longer than
5 15 years.

6 COMMISSIONER PERRY: And is it
7 good?

8 CHAIRMAN HERRMANN: Yeah. In the
9 right application, the right types of soils, and the
10 right types of voltage, yes.

11 COMMISSIONER PERRY: So should
12 this be an option in a general permit?

13 CHAIRMAN HERRMANN: One point of
14 clarification -- pardon?

15 COMMISSIONER PERRY: Should this
16 be an option in the general permit?

17 CHAIRMAN HERRMANN: I think we'll
18 have to go to the department for their interpretation.

19 MR. GALBRAITH: I think --
20 and I agree with the -- it's a unique system and we
21 need to find -- we need to amend -- and I think this is
22 what we're working on is finding the right shaped hole
23 to put this peg in and I don't think it's a matter of
24 singling you out. Maybe you're -- you may be a pioneer
25 that if we can get the -- it's an administrative issue.

3 want to have to give a variance --

4 COMMISSIONER HARDECKE -- something
5 we want to look at.

6 COMMISSIONER PERRY: -- to every
7 person who wants to try something, but I wonder if this
8 shows a need for maybe a new category?

9 MR. GALBRAITH: Well, I
10 don't want to say more at this time because I -- we're
11 exploring several options, one of which should settle
12 this for him and for others. And that's my -- that's
13 what we're working on.

14 CHAIRMAN HERRMANN: I'd like to --

15 COMMISSIONER PERRY: So you'll
16 report back to us on it?

17 MR. ARNOLD: I asked to
18 speak as well. And I'm going to talk about the
19 regulatory problems square peg hole as it applies to
20 everybody. And so I would like to address some of your
21 comments. And I also have (inaudible). If you have
22 questions, I'd be glad to answer them.

23 CHAIRMAN HERRMANN: Question first:
24 He refers to an anaerobic lagoon, did he really have an
25 anaerobic lagoon or --

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1 MR. ARNOLD: Yes.

2 CHAIRMAN HERRMANN: -- facilitative
3 lagoon?

4 MR. ARNOLD: Oh, well, I
5 wasn't there when it was in existence, but it was a
6 very deep -- it was an old clay pit is what it was. So

7 it was like 20 feet deep.

8 CHAIRMAN HERRMANN: Okay. So it
9 was truly -- it truly was a --

10 MR. ARNOLD: Anaerobics,
11 probably an anaerobic lagoon. The -- I have viewed the
12 system that he has and I would have to say from my
13 professional opinion that that system is a state of the
14 art in terms of a subsurface drip irrigation. Far
15 better than the surface irrigation that's under the
16 rule and really does need, you know, special
17 consideration.

18 CHAIRMAN HERRMANN: I retired from
19 the business about 13 years or so ago, and I might say
20 that we used drip irrigation very, very frequently in
21 Illinois, in the northern part of Illinois because the
22 soils over there were very, very minimal to drip
23 irrigation systems. And it was very, very frequently
24 used even in food processing plants. It's not a --
25 it's not a new technology.

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1 MR. ARNOLD: Well, the
2 square peg, round hole is a systematic problem that the
3 design rules that the department has now are written
4 only for surface irrigation systems and are based on
5 municipal surface irrigation systems. And since
6 there's nothing else, they've attempting to apply it to
7 everybody else. So all the criteria you might be
8 concerned about on a surface system, have been
9 interpreted to say shall and so there are things that
10 don't even apply to a subsurface system like you said.

11 There's no category.

12 I'm kind of getting into my next
13 speech, so I don't want to go too much more, but there
14 are some problems with the rule itself that need to be
15 fixed.

16 CHAIRMAN HERRMANN: And that's
17 under discussion. Right? Mr. --

18 MR. GALBRAITH: Well, I have
19 a meeting with -- well, I've met with Mr. Sloan. I
20 have a meeting with Mr. Arnold set up for March 24th,
21 to discuss that.

22 CHAIRMAN HERRMANN: Okay.

23 MR. SLOAN: That's all I
24 have thank you.

25 COMMISSIONER PERRY: Thank you.

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1 CHAIRMAN HERRMANN: Thank you, sir.

2 MR. MEFRAKIS: And I have
3 one more --

4 CHAIRMAN HERRMANN: Yes, sir.

5 Refaat My name is Refaat

6 Mefrakis

7 CHAIRMAN HERRMANN: Yes, Refaat?

8 MR. MEFRAKIS: To address Mr. Sloan's
9 issue, I think we -- there's no really a rule change or
10 anything. I think the rules as it is -- as it exist
11 can work for his. Okay. His situation is that the
12 category of subsurface discharge is not under the
13 general permit. And I think we can tweak the general
14 permit to incorporate subsurface. But I don't feel

15 personally -- feel right now that there is a real need
16 of a rule change or a variance or anything that
17 accommodate his request.

18 There may be other issues that --

19 CHAIRMAN HERRMANN: What other
20 issues --

21 MR. MEFRAKIS: -- Mr. Arnold has, but
22 maybe a separate issue from Mr. Sloan's concerns. So I
23 just kind of wanted to separate those two issues.

24 COMMISSIONER PERRY: I appreciate
25 that.

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1 MR. MEFRAKIS: And I think we're going
2 to get a resolution to this problem.

3 CHAIRMAN HERRMANN: Good. Good.
4 Thank you, Refaat.

5 COMMISSIONER HARDECKE: So would Mr.
6 Sloan's be one of those 200, I suppose?

7 MR. GALBRAITH: They're one
8 of the 200.

9 COMMISSIONER PERRY: Now, we're
10 down to 199.

11 MR. GALBRAITH: Correct.
12 You've honed in on that very --

13 COMMISSIONER HARDECKE: Definitely
14 over 12 months. Right?

15 MR. GALBRAITH: It's over
16 360 days, yes.

17 COMMISSIONER PERRY: We don't
18 have 199 more people lined up to talk to us, do we?

19 MR. ARNOLD: Let me give
20 you a copy of my statements. And I'm not going to
21 cover everything here, but I'm going to give you a
22 quick summary of the issue.

23 COMMISSIONER HARDECKE: Thank you.

24 MR. ARNOLD: Good afternoon,
25 although it's getting a little late. I appreciate the

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1 opportunity to be here. Again, my name is Ken Arnold.
2 I'm a self-employed environmental consultant for about
3 the last five years. But for almost 30 years before
4 that, I worked for the Department of Natural Resources
5 in what was then the Water Pollution Control Program is
6 now the Water Protection Program.

7 And I worked permits, all aspects
8 of waste water treatment involving NPDES permitting, the
9 application to seek delegation from EPA for the NPS
10 program, the first non-point source plan for
11 Agriculture for Missouri. I did inspections of
12 industrial facilities. At that time we didn't have
13 regional offices. We did them all out of the central
14 office here in Jefferson City.

15 And I basically started working on
16 those no discharge systems for land applications to
17 recycle nutrients, working with the University of
18 Missouri and the Natural Resources (indiscernible)
19 system. Missouri in 1971 developed one of the first
20 programs in the nation for design guides dealing then
21 with animal waste. And we expanded that to deal with
22 all types of sources including industries like Mr.

23 Sloan's as well as municipal systems and small
24 residential areas.

25 So for about -- in the mid-'80s the

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1 department actually formed a formal group called the
2 Land Application Unit, which I was in charge of that
3 dealt with promoting an oversight of all types of no
4 discharge systems. And I worked on developing and
5 writing a number of design guidelines and rules that
6 are currently in place. And I'm hear to tell you that
7 some of the things I wrote back then are outdated and
8 need changing. And changes can sometimes be good, but
9 it has to be done the right way.

10 What I've seen -- and since I've
11 been in private practice, I have been of course been
12 able to visit with people in the producers and the
13 private sector, but I've also visited with other
14 professionals that I consider experts in the field from
15 University Extension Service and the NRCS who actively
16 work with DNR through producers in submitting
17 applications on a daily basis.

18 And they basically have provided
19 input to me. So I'm trying to represent actually not
20 my own views, but a whole bunch of professional people
21 that are seeing the same things that I seen directly
22 with the way DNR is now interpreting existing design
23 rules and permitting rules for these systems.

24 And I believe that something has
25 changed in the last five years since I retired. And

1 the best thing is a whole bunch of other people retired
2 too, so that all the people with experience within the
3 department in the land application field have left.
4 Most of the people with experience in any type of
5 engineering of waste water treatment system have left
6 the agency. So the agency is faced with a whole bunch
7 of new people that don't have background in the field,
8 don't have training in the field and are trying to read
9 regulations and make their own interpretation.

10 The interpretation they're making
11 are much different than the interpretations that I made
12 when I was there and that other people --

13 (End of Tape 3, Side B)

14 (Start of Tape 4, Side A)

15 MR. ARNOLD: -- my concern is that
16 I, you know, I can kind of expect that a new person
17 might struggle. But a number of us have already
18 attempted to help and provide input and guidance. And
19 basically the door has been shut in our face. Not
20 shut, but slammed. But the staff there has refused to
21 even consider some of the issues we've raised.

22 And that is really our most concern
23 to me, that there's a real lack of -- some of the same
24 reactions of the public comments have come in on
25 permits. You know, they review them and they respond

1 but they don't make any changes to them. Things -- and

2 they're changes of things could result in improvement
3 to the environment that certainly isn't going to impact
4 their environment. And so I think that there needs to
5 be, you know, some change to basically come back to a
6 more user friendly approach and to deal with real
7 environment problems not just a knit picky requirement
8 that might be in a rule.

9 And so the rule which was last
10 written in 1989 is -- is out of date. It doesn't cover
11 all of the industries out there as mentioned during the
12 Swiss Meat discussion. But there's also
13 misinterpretation of what is in the rule now. The rule
14 in the design rule in Chapter 8 discusses a number of
15 items that are recommendations and guidelines.

16 And so sometimes there's a
17 suggested approach and then there's another minimum
18 number. And there's a lot of discussion about, you
19 know, they'll accept other alternatives with
20 justification. And even in the Chapter 6 permit rule
21 there is discussion of exceptions can be made to deal
22 with special circumstances.

23 Request have been made in recent
24 years. I put in a request by myself in the last few
25 months to consider exceptions because we've got a

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1 system that clearly meets all the environmental laws
2 and is even better than what the rule requires, but
3 we're told no that you can't meet this -- well you can
4 if you want to get a site specific permit and pay
5 \$3,500 a year, but otherwise you're penalized.

14 COMMISSIONER PERRY: You
15 mentioned UMC and NRCS. That's Bob Brose (ph.) and Bob
16 Ball?

17 MR. ARNOLD: University Extension
18 and NRCS, and DNR right now are the only three groups
19 that are met.

20 COMMISSIONER PERRY: Am I right?
21 Is that Bob Brose and Bob Ball?

22 MR. ARNOLD: It's people they work
23 with, not them directly. But it's people on the Ag
24 Engineering staff that they work with. And the Ag
25 Engineer assistant state engineers for NRCS attend.

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1 Some -- some of the people are former DNR employees
2 like myself, who have great experience and background
3 in the field and people I worked with when I was there.

4 COMMISSIONER PERRY: You know,
5 we've been talking today a lot about stakeholder groups
6 and we've changed sort of the process on developing
7 some of our other rules by those stakeholder groups
8 come together. Why not form up with that group -- I
9 mean, we don't have to tell you to get together and nor
10 does the department. And if the department would like
11 to participate -- but perhaps from those discussions --

12 MR. ARNOLD: Well --

13 COMMISSIONER PERRY: -- you can
14 actually give us some proposals for what could be
15 changed.

16 MR. ARNOLD: Yeah. If I --

17 COMMISSIONER PERRY: Rather than

18 laying this all on the department, when you come up
19 with an idea, all of you experts out there --

20 MR. ARNOLD: Yeah. We'd be --

21 COMMISSIONER PERRY: -- get
22 together and --

23 MR. ARNOLD: -- happy to do that.

24 I haven't found a stakeholder group that fits what I'm
25 talking about. But of course, there have -- there are

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1 stakeholder groups that are developed when general
2 permits are developed, like for the CAF0 and for food
3 products. And I did participate in those and the
4 response back for every single suggestion was no, no,
5 no.

6 COMMISSIONER PERRY: It looks to
7 me that you have a group of consultants here. And some
8 of them are former department --

9 MR. ARNOLD: That's right.

10 COMMISSIONER PERRY: If you came
11 together and gave us specific proposals of we'd like
12 you to look at this on this particular thing, I think
13 it would -- I don't want to over bog the department
14 every time somebody doesn't like something. We can't
15 say, okay, the department can you go fix this? But if
16 you could come with some concrete suggestions on what
17 would improve the process and include them in some of
18 those negotiations, I think we could maybe move some of
19 this along.

20 CHAIRMAN HERRMANN: I might say,
21 Ken, in our -- somewhat in defense of our

22 current director, that he currently has about eight
23 stakeholders groups.

24 MR. GALBRAITH: Ni ne.

25 CHAIRMAN HERRMANN: Ni ne? Ni ne

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1 stakeholders groups meeting on various subjects at
2 least once a month.

3 MR. ARNOLD: Where can we find out
4 information about that? Because I actually didn't see
5 it on the website. Maybe I missed it, but I -- how do
6 you find out about those things?

7 MR. GALBRAITH: Go to our
8 home page and under the Clean Water Forum, and I think
9 if you -- well, under the Clean Water Forum, the nine
10 groups are listed there.

11 CHAIRMAN HERRMANN: And there
12 are --

13 CHAIRMAN HERRMANN: All points of
14 discussion, never always unanimous decision, but at
15 least so far, as far as I know there hasn't been a
16 physical fight, but a few harsh words tossed around now
17 and then. But Mr. Galbraith has made, in my opinion,
18 very good use of the stakeholders groups to come up
19 with changes and regulations changes in the operating
20 procedures and other things. And I think that's the
21 proper way to approach it.

22 MR. ARNOLD: And that's
23 actually -- you know, I didn't go into more or less
24 suggest is that I had. I may have used different
25 terms. However, this topic, the technical topics were

1 documented are so specific they kind of get lost when
2 you've got a larger group of public people that won't
3 understand the concepts or issues. It really almost
4 needs to be a separate stakeholders group on its own to
5 be effective, a subcommittee or something.

6 CHAIRMAN HERRMANN: Practicing
7 engineering for more than 50 years in a consulting
8 business, I can tell you that I appreciate that
9 comment. When you're trying to convince somebody --
10 some, let's call them uninitiated person, in technical
11 matters and it'd difficult. It's very difficult.

12 COMMISSIONER PERRY: Here comes
13 that word again.

14 MR. ARNOLD: I want to
15 reiterate-- and I'm not sure this is the Commission's role,
16 but part of the problem in addition to the rules is
17 that because of the turnover DNR currently has, new
18 employees and there are no technical experts left
19 within, but they're making technical decisions. And I
20 think they need to acknowledge that because of their
21 lack of experience that they need to be -- they need to
22 look for input and they need to be a little bit more --
23 they need to change their attitude when dealing with
24 other people.

25 CHAIRMAN HERRMANN: There is the

1 provision in Section 644 of the State Statutes which

2 gives the Commission the authority to hire outside
3 consultants, outside experts to accomplish some of the
4 tasks that might be desired to be accomplished by
5 the -- outside the department. And I think that's --

6 MR. ARNOLD: That's an
7 excellent idea and actually that's on my list too. I
8 didn't want to get into it. That I think in the
9 interim that that's something you ought to strongly
10 look at. That anything short of that is going to drag
11 on for a long time. And there are a lot of pressing
12 issues that other people have that haven't come before
13 you yet, that needs to be dealt with.

14 COMMISSIONER HARDECKE: I guess what
15 I'm hearing you say that the things have changed over
16 the last maybe ten years to where -- I mean there's
17 been a lot of talk over the last several years about
18 how Missouri's an unfriendly state to do business in
19 and a lot of it due to environmental regulations. And
20 I think what I'm hearing you say is that maybe the
21 interpretation of our regulations by the agencies have
22 gradually deteriorated to make that situation what it
23 is today?

24 MR. ARNOLD: That's
25 correct. That would be fair.

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1 CHAIRMAN HERRMANN: I don't think
2 there's anybody in the room old enough to remember when
3 Jack Smith was the head of the --

4 MR. ARNOLD: Me.

5 CHAIRMAN HERRMANN: You?

6 MR. ARNOLD: I worked for
7 hi m.

8 CHAIRMAN HERRMANN: You're almost
9 as old as I am then. When Jack Smith was here, you
10 talk about a place being unfriendly to operate in.
11 When Jack Smith was here as the head man, there was
12 only one way to do it, his way. If you wanted to
13 remove iron and manganese from a water supply, you did
14 it by forced draft aerator. There was no other way to
15 do it in his mind, so you needn't send any plans
16 because they weren't going to be approved.

17 This group now, at least, will give
18 you the option of providing what you think is the best
19 way.

20 MR. ARNOLD: Right.

21
22 CHAIRMAN HERRMANN: And you prove,
23 as the engineer, you prove that that's the best way to
24 do it.

25 MR. ARNOLD: There you

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1 go.

2 MR. ARNOLD: The other
3 thing, I visited -- and Mr. Galbraith will know, and some of
4 you may, but Leland Neher, who is still within the
5 program is the engineer that's been there longest. He
6 doesn't really deal with the issues that I'm talking
7 about, a separate group, but he works in the state
8 revolving fund engineering section now.

9 But he did help work on some of the

10 rules the same time that I was there and we worked
11 together on some of the issues. I visited with him
12 this morning during the break. I just asked him, you
13 know, how things were going and if there were any plans
14 to revise the Chapter 8 rules. And he said, you know,
15 he wasn't aware of any that, you know -- it doesn't
16 seem to be a very high priority to deal with
17 engineering things.

18 But he also said that from his unit
19 that he has sent out some type of correspondence in the
20 past to consulting engineers confirming that the
21 Chapter 8 rules in deed are out dated, but the
22 department does consider and allow deviation and even
23 recommends referring to some other more up-to-date
24 design guides. Now, that's occurring at the same time
25 this other group is saying they can't make any changes

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1 and won't allow any deviations.

2 So you know, Ed, there needs to be
3 some internal discussion there on --

4 CHAIRMAN HERRMANN: I think Chapter
5 8 is almost an extraction from the 10 state standards.

6 MR. ARNOLD: Correct.

7 CHAIRMAN HERRMANN: And the 10
8 state standards I don't think have been revised in a
9 good number of years.

10 MR. ARNOLD: And as you
11 imagine with state rules, the bulk of the rules were
12 published in 1979 and I was there.

13 CHAIRMAN HERRMANN: Right.

14 MR. ARNOLD: Before that,
15 they were in guidelines and they were already 20 or 30
16 years old and they took the old guidelines and made
17 them rules. So '79 is really a '59 document. The '89
18 version, you know, is also out of date at the time it
19 was issued, but --

20 CHAIRMAN HERRMANN: I would think
21 Ken, you presented some ideas to us. The
22 commissioners will take a look at that. But in the
23 meantime, I would encourage you and other people like
24 you to work through Ed as a stakeholders group to bring
25 about some of these changes that you're suggesting

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1 instead of --

2 MR. ARNOLD: I would be
3 happy to do that. We may be, you know -- if we could
4 try to set up one to deal more specifically with
5 engineering issues --

6 CHAIRMAN HERRMANN: I think Ed's --

7 COMMISSIONER PERRY: I think
8 that's a great idea.

9 CHAIRMAN HERRMANN: Right.

10 COMMISSIONER PERRY: And actually
11 come up with some proposals and bring those to us.
12 It's to all of your benefit.

13 CHAIRMAN HERRMANN: Thank you. We
14 also have a request from -- let's see, that's Mike
15 Sloan. That's where we're at. Here it is -- Tony
16 Bowman from Protect Mark Twain Lake.

17 MR. BOWMAN: Yes, sir. I want to

18 thank the Chairman and the Commission. This is neat.
19 I've been here since nine o'clock this morning. I'm
20 very impressed about a Commission that's -- that's this
21 understanding and willing to listen to people.

22 I'll make this real brief. We're
23 here today representing a bunch of concerned residents,
24 landowners and businesses in the Mark Twain Lake area.
25 We have formed to protect Mark Twain Lake Association.

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1 And 28 days ago I'd never heard of a CAFO, C-A-F-O. In
2 the last 28 days we've heard it -- I've heard it many
3 times. I was surprised to hear it today so many times.
4 But we're hear concerning the application of David
5 Luetkemeyer and Cargill on a corporate CAFO operation,
6 which will be within one mile upstream from Mark Twain
7 Lake at its normal pool of 606. And it will be
8 one-half mile from the flood pool of 636, that's feet
9 above sea level. I'm sure you know of that.

10 Back in 1993 when we all had the
11 great flood and they closed the gates and they held the
12 water in Mark Twain Lake. It did reach 638, two foot
13 above the flood pool. But the finally had to let it go
14 when it started -- they were afraid it was going to
15 breach the dam. I have 160 acres that's set between
16 this proposed area for the confinement and Mark Twain
17 Lake. The Corp has an easement on my property. And my
18 property floods with the lake quite often.

19 So at 636, 638, the lake would be
20 within one-half mile of a 10 million gallon waste
21 manure holding lagoon. I've heard today some stories

1 Department of Natural Resources. We're just trying
2 right now to reach any -- any arm that we can to at
3 least have a public hearing and delay this permit a
4 little bit.

5 I almost was in favor of asking Ed
6 if this couldn't be one of the 200 that he had there
7 that took over a year or two to process. That wouldn't
8 upset me.

9 COMMISSIONER PERRY: Sir, there
10 are a few things. Is your concern that the lagoon --
11 what is your safety concern about the lagoon?

12 MR. BOWMAN: Our safety
13 concern about the lagoon is not only a breach or a
14 seepage or whatever for ground water, it sets
15 approximately 50 feet from a creek that -- and I
16 didn't -- I didn't know how this was going to work. I
17 should have brought maps and everything, but it sets
18 within 50 feet of a creek that drains directly into
19 Mark Twain Lake.

20 COMMISSIONER PERRY: Is this
21 facility presently permitted?

22 MR. BOWMAN: No. No,
23 it's not. This is just an application.

24 COMMISSIONER PERRY: It's an
25 application --

1 MR. BOWMAN: Tomorrow is the
2 closing date for comment on the permit.

3 COMMISSIONER PERRY: Okay. So
4 there is a public comment. Are you saying that --

5 MR. BOWMAN: There has
6 been, yes.

7 COMMISSIONER PERRY: -- that you
8 have a public comment period. Is there not a hearing
9 on that?

10 MR. BOWMAN SPEAKER no.

11 MR. BOWMAN: My understanding is
12 that -- that the public (inaudible) a large response of
13 letters to the Department of Natural Resources. And
14 those have to be received. And once that response
15 (inaudible) that shows our concern (inaudible) the
16 department will call a public hearing. There's no
17 public hearing scheduled now (inaudible).

18 COMMISSIONER PERRY: I'm sorry.
19 I missed your name.

20 MR. BOWMAN: I'm sorry. Tony
21 Bowman.

22 COMMISSIONER HARDECKE: Now, you are
23 aware that this is not a discharge system. Right?

24 MR. BOWMAN: Yes. It is
25 not a discharge system. We do have some questions on

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1 the soil type and it's clay pan and also on the slope.
2 If it's processed clay, it's not going to soak in.
3 It's going to wash immediately right down the creek,
4 right through --

5 COMMISSIONER PERRY: I'm sorry.
6 I don't understand. I thought clay pan is a liner for
7 a lagoon is a good thing.

8 MR. BOWMAN: That's --
9 we're talking in terms of the application that would be
10 on top of the soil. The soil (inaudible) with the clay
11 pan underneath the soil --

12 COMMISSIONER PERRY: Okay. Were
13 they planning to apply on top or were they injection
14 system?

15 MR. BOWMAN: No. It's
16 sprayed on top.

17 COMMISSIONER PERRY: They were
18 doing both?

19 MR. BOWMAN: Both. They
20 have some farm land and they have grass. Of course grass is... I
21 would say the majority of it is probably on grass right
22 now. .

23 COMMISSIONER PERRY: And did you
24 have specific practices that -- or are you just worried
25 about a hog facility going in in general?

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1 MR. BOWMAN: We're
2 worried about the hog facility going in so close to
3 Mark Twain Lake.

4 MR. ELY: I can
5 address (inaudible).

6 COMMISSIONER PERRY: Sure.

7 MR. BOWMAN: He's got
8 some engineering. Any other questions or anything?

9 CHAIRMAN HERRMANN: No. Is that
10 Mr. Ely?
11 MR. BOWMAN: Yes. Thank
12 you.
13 CHAIRMAN HERRMANN: Thank you, sir.
14 MR. ELY: I do have
15 a -- I have a real quick solution on this, Chairman and
16 commissioners, but Mr. Easley and Kelly or Kelly kind
17 of threw me off. I -- from this morning -- this
18 morning's meeting, I was going to ask Commissioner
19 Perry just to make a motion denying the permit and we'd
20 be done. After lunch they started make motions --
21 motion, so I didn't know that if she wasn't the only
22 one that could do that.
23 COMMISSIONER PERRY: I was the
24 only motion person? Oh, no.
25 MR. ELY: My name is Gary

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1 Ely and we do --
2 COMMISSIONER PERRY: I'm sorry,
3 sir. I didn't hear you.
4 MR. ELY: My name is Gary Ely,
5 E-L-Y. And we do represent Protect Mark Twain Lake.
6 Our -- I guess you heard the story today. And I don't
7 think anyone can deny that they don't seep, that they
8 haven't broke and even the best engineers in the world
9 can't say that it's perfect. Tom Sauk is a perfect
10 example.
11 Our concern is, and I know it's
12 yours too because in 20.7 CSR 20.7 Page 36, you

17 right now.

18 COMMISSIONER PERRY: Is it
19 another contract Cargill?

20 MR. ELY: Yes it would be.
21 Cargill's looking at -- from the information I have --
22 looking at putting 30 or 40 of these in northeast
23 Missouri. I'm not arguing that one way or another. I
24 have my own opinion, but that's not my reason here
25 today.

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1 The reason being is they've got
2 their plants, their packing plants is in Iowa and one
3 in Beardstown, Illinois. And since Iowa is not CAFO
4 friendly had Illinois has quite a few restrictions and
5 we don't have that many restrictions on them, they are
6 worried about transportation cost currently with the
7 diesel fuel issue. And so they're trying to move these
8 in as fast as they can in northeast Missouri and get
9 them closer to the plant.

10 At least -- I'm not a mouse. I
11 don't sit on their Board of Directors, but I'm
12 reasonably sure that's -- that's what behind it.

13 CHAIRMAN HERRMANN: What size is
14 this facility proposed to be?

15 MR. ELY: 9-- 4,980 hogs.

16 COMMISSIONER PERRY: What size
17 CAFO is that?

18 MR. ELY: 1C. Your 1A is much more
19 restrictive. You probably know all that, but --

20 COMMISSIONER PERRY: And on the

21 1C that was how many hogs?

22 MR. ELY: 4,980.

23 COMMISSIONER PERRY: Stay under
24 5,000 which would keep you in that category. Right?

25 COMMISSIONER HARDECKE: It'd be

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1 fine --

2 MR. ELY: Correct. So my big --
3 one of my big -- one of my big concerns here is that
4 well basically the Corp of Engineers say that you can
5 build anything -- I was told and I'm reasonably sure
6 this is from an accurate source -- at 500 feet from
7 their property line. There is a location just directly
8 south of me that you literally could put a CAF0 about 6
9 or 700 feet from the water line of the lake, setting on
10 top of a hill.

11 And I'm telling you there's all
12 kinds of documentation -- documentation. They do spill.
13 They do leak. The clay pan that we mentioned in this
14 area, that Tony mentioned, basically what we're saying
15 there is as the -- as the waste is applied, eventually
16 that is going to saturate and then the clay pan
17 should -- we're saying that it should then seep off
18 into the lake, into the --

19 COMMISSIONER PERRY: What about
20 the idea the plant taking it up, which is why it's
21 being land applied in the first place?

22 MR. ELY: Well, when you look at
23 the application of Mr. Luetkemeyer's, I have all kinds of
24 questions because that's not really addressed in our

25 opi ni on.

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1 COMMISSIONER PERRY: Well,
2 permits do address that, do they not?

3 MR. ELY: Yes, they are. But
4 permits are also supposed to be accurate. Correct?
5 When you look at that permit there's a topographical
6 map in there. And the hog confinement is placed in one
7 location, and then the actual description of that
8 location is a half a mile away. So when I look at the
9 soil type -- let me go back just one step. I'm the --
10 well, let me finish that thought.

11 So when you look at that soil type,
12 I do not know what the real soil type is at that
13 location or in other application places. They have put
14 Putnam loam on here. This -- I'm a seventh generation
15 citizen of Ralls County. Farmers all the way. And --
16 but most -- more so are my brothers than me. And so
17 they've taken soil samples over the year in this same
18 area directly east and directly west of
19 Mr. Luetkemeyer's farm.

20 As a matter of fact, one of the
21 farms that he occupies he bought from my brother. And
22 he tells me that predominantly it's Mexico -- Mexico
23 loam. And if you run that by your engineers on Mexico
24 loam, you're going to find that that's -- that's not
25 good. It percolates pretty bad. Now, that's my

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1 understanding from -- there are some flaws in this
2 application.

3 I don't know why. I don't know
4 how. I'm not privy to those discussions and I can't
5 talk to the DNR department -- no offense -- and ask all
6 those questions.

7 COMMISSIONER PERRY: And have you
8 submitted these comments during the public comment --

9 MR. ELY: They are being
10 submitted -- they will be submitted tomorrow by
11 Mr. Maxwell. We've -- Joe Maxwell, to represent our
12 group. And they've -- there's quite a lot of -- quite
13 a lot of concern. I -- I think in the Hannibal Courier
14 Post in the information that Tony provided you, if you
15 look at that, it's probably about -- I think there was
16 a little bit more than that Tony. I think there was
17 like 60 or so. And out of that there was only like
18 three people that -- that gave it any support at all.
19 And almost everyone up there was against it.

20 COMMISSIONER HARDECKE: Now, where
21 was this?

22 MR. ELY: Hannibal Courier Post in
23 Hannibal, Missouri.

24 COMMISSIONER HARDECKE: A public
25 meeting you mean?

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1 MR. ELY: It's a -- it's a
2 newspaper there.

3 COMMISSIONER HARDECKE: I'm sorry.

4 COMMISSIONER PERRY: It's a

5 public -- it's a -- you're talking about this chat room
6 sort of thing.

7 MR. ELY: Yeah. They have a --
8 they have a web page and you can go in there. And
9 they'll set up in the morning and they'll ask a
10 question of the day; something to do with community,
11 with something going on in the community and what's
12 your opinion; that kind of stuff.

13 But there's a -- there's a bigger
14 issue here and that's really my main concern that I
15 came here today. Mark Twain is probably -- I don't --
16 I didn't do any research on this -- is probably -- it's
17 certainly not the smallest, not the biggest either.
18 But Mark Twain Lake is the not the only one that we
19 should be concerned about.

20 Me and a neighbor -- Route J Lake,
21 which is a small water supply facility for Monroe City,
22 Missouri. Me and my neighbor decided since he has -- I
23 have a little land and he does too -- we could probably
24 develop a 1C CAFO. We decided we'd put that CAFO
25 right in the drainage area of Route J Lake. You can do

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1 it. You can put a -- we can probably put about maybe 4
2 or 500 feet away.

3 COMMISSIONER PERRY: Someone from
4 the department tell me if you can just put --

5 MR. ELY: Is that true?

6 COMMISSIONER PERRY: -- a CAFO
7 where you want?

8 MR. MARTIN: There is

9 no -- excuse me -- Bruce Martin. There are some
10 requirements for the largest CAFOs, set backs. They
11 call them when it's for -- L1 means drinking water. We
12 will need to look into this.

13 MR. ELY: 1A that
14 would be correct.

15 MR. MARTIN: Yeah, 1A.
16 The very largest ones we have set backs.

17 COMMISSIONER PERRY: Well, and
18 part of this goes back to my question before; we're
19 dealing with some rules that are a little bit older and
20 we're waiting for EPA guidance and we're kind of stuck
21 here, aren't we? On the other hand, are you trying to
22 keep out hog animal agriculture in northern Missouri?

23 MR. ELY: No. No. No. No, this
24 is strictly -- strictly -- strictly drinking water as
25 far as I'm concerned. I have my own opinion on CAFO,

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1 but that's my opinion and it has nothing to do with
2 what we're here to do today. I just -- all right. So
3 we've got another one on Lick Creek. How many more
4 have we got coming, you know? And as you build more
5 and more of these, what's --

6 CHAIRMAN HERRMANN: How many do you
7 have presently?

8 MR. ELY: In Ralls County?

9 CHAIRMAN HERRMANN: No. No. In
10 the watershed area of Mark Twain Lake.

11 MR. ELY: None exactly. None --
12 they're not near this close. There was some probably

13 two-and-a-half miles away. And --

14 UNIDENTIFIED SPEAKER:

15 Two-and-a-half miles and it's not a -- it's -- what's
16 the term? It's not a finished operation -- furrowing.

17 MR. ELY: Furrowing. Now you
18 understand with a furrowing operation the pigs are
19 smaller.

20 COMMISSIONER PERRY: I
21 understand.

22 MR. ELY: You have less -- what was
23 he -- had less waste.

24 COMMISSIONER PERRY: Well you
25 have less animal units. You have more pigs make one

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1 animal unit. So if you're just counting just the
2 number of pigs --

3 COMMISSIONER HARDECKE: The animal
4 unit structure makes them all equal.

5 COMMISSIONER PERRY: All right.
6 To equal -- if you know how many animal units, then
7 we're talking apples to apples. And sometimes these
8 numbers are terribly distorted by people counting pigs.

9 MR. ELY: And animal units are
10 what, two dot --

11 COMMISSIONER HARDECKE: 1000 pounds
12 of animal is an animal unit.

13 COMMISSIONER PERRY: In pigs.

14 COMMISSIONER HARDECKE: In any unit
15 animal.

16 MR. GALBRAITH: Well,

17 we'll -- have you -- and you say you put all these
18 comments in your --

19 MR. ELY: This -- we have --

20 MR. GALBRAITH: -- comments
21 to the department?

22 MR. ELY: -- I have a PE engineer
23 that we have consulted that is providing these. I'm
24 not even sure that in the case of the application -- I
25 don't see anywhere where it says it was PE engineer,

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1 but --

2 MR. GALBRAITH: It doesn't
3 have to be a PE to comment, no. So we'll -- we'll see
4 those and prepare our responsive comments to those.

5 MR. ELY: There's a --

6 CHAIRMAN HERRMANN: Did you get the
7 map I handed you.

8 MR. ELY: There's other issues --

9 COMMISSIONER PERRY: Is this what
10 he's talking about? Can I have a copy of that?

11 CHAIRMAN HERRMANN: Yeah. But I
12 count nine of them in the water shed.

13 COMMISSIONER PERRY: Did you
14 hand -- where did that come from?

15 CHAIRMAN HERRMANN: Yeah. I count
16 nine other facilities in the water shed.

17 COMMISSIONER PERRY: Can I see
18 that? Is that the location of CAFOs?

19 COMMISSIONER HARDECKE: I guess I
20 have a question.

21 COMMISSIONER PERRY: Can I have
22 it?

23 COMMISSIONER HARDECKE: What would
24 you consider a safe distance?

25 MR. ELY: Real good question. For

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1 me you have to ask the question -- to answer that
2 question the one thing I would want to do would be to
3 do it off the flood plain. And I'm -- I'm -- I
4 personally, without expertise --

5 COMMISSIONER PERRY: Is this one
6 located on a flood plain by the lake?

7 MR. ELY: The flood plain actually
8 touches the property line of Mr. Luetkemeyer's.

9 COMMISSIONER PERRY: But the
10 lagoon's not located in a flood plain?

11 MR. ELY: No. It will be -- it
12 will be another 400 feet from the flood plain, 4 or
13 500. The flood in '93 actually came onto
14 Mr. Luetkemeyer's property. You got to understand that
15 that's a --

16 COMMISSIONER PERRY: And Mr.
17 Luetkemeyer is located in Ralls County?

18 MR. ELY: No. He lives in
19 St. Louis.

20 COMMISSIONER PERRY: But this
21 operation -- you're in Ralls County?

22 MR. ELY: Yes. And we'll --

23 COMMISSIONER PERRY: And the
24 operation is in Ralls County because the lake goes

25 across a few counties?

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1 MR. ELY: Actually we're trying
2 to -- tomorrow I intend to meet with the -- well, I'm
3 going to meet with the Ralls County commissioners
4 again.

5 COMMISSIONER PERRY: And they're
6 some --

7 MR. ELY: Friday I'm going to
8 meet --

9 COMMISSIONER PERRY: There are
10 some meetings being held with the University etceteras
11 in Ralls County, are there not?

12 MR. ELY: No.

13 UNIDENTIFIED SPEAKER: I'm not
14 aware of any.

15 MR. ELY: No. I presented that
16 option to them. No one has ever contacted me.

17 COMMISSIONER PERRY: Who did you
18 talk to?

19 MR. ELY: Al Kennett.

20 COMMISSIONER PERRY: Who?

21 MR. ELY: Al Kennett.

22 COMMISSIONER PERRY: From?

23 MR. ELY: He's from Missouri
24 Extension, but Al may be retired now, to be honest with
25 you.

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1 COMMISSIONER PERRY: Well, I
2 would be happy to put you in contact with the person in
3 charge of that, and his phone number.

4 MR. ELY: Now you do understand
5 that this -- this is going to happen. I mean if the
6 permit is granted, we'll never get that done. It's an
7 important -- it's a well worth while endeavor and I am
8 committed to do that. But that's going to be a longer
9 process because they're trying -- I certainly
10 understand why -- why the hog farmers, CAFO farmers --
11 your small farmers, your smaller operators, they are --
12 they don't want CAFOs either. When you're talking --

13 COMMISSIONER HARDECKE: I would
14 say -- I would ask you to consider that is not a true
15 statement.

16 MR. ELY: Okay.

17 COMMISSIONER HARDECKE: Because
18 what's good for the CAFOs comes all the way down to the
19 bottom.

20 MR. ELY: All the way
21 down to the bottom, how is that?

22 COMMISSIONER HARDECKE: No matter
23 how small you are, you're effected by what is done to
24 the CAFOs. I'll guarantee you that because that is
25 what happened the last ten years.

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1 MR. ELY: Well, that's -- okay. I
2 rest -- no offense, sir -- I agree with you 100
3 percent. And that's an issue that we have to debate.

4 I agree. I am not, for example -- I know you have to
5 know what's going on. I know you all know what's going
6 on in the State of Missouri. You've heard about the
7 health laws and that kind of stuff.

8 COMMISSIONER HARDECKE: Right.

9 MR. ELY: I am not for health laws.
10 From what I've seen, it's doing exactly what you're
11 saying. I am not saying I'm totally against them, but
12 I'm just not exactly -- that's not the way I see going
13 today. What I do see going is some kind of a zoning or
14 some kind of better restrictions in terms of spacing.
15 Well, I would -- and don't get concerned about this
16 because I'm going to -- this is not an issue with me.

17 I live on a century farm, but it's
18 not an issue. When this goes in I'll have to move
19 because my front door is about 250 feet from where they
20 can spread this stuff and my wife has respiratory
21 problems. I just don't think it's right.

22 Now, having said that, don't let me
23 sidetrack you that this is a -- forget that. I will
24 move and will live and we'll move on. She'd like to
25 get away from this thing anyway if it goes through,

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1 so -- but having said that -- disregard that statement.
2 I'm just saying that I'm going to have to move.

3 My argument here is strictly that
4 we need to get something going, some kind of dialogue.
5 There has to be something done here. And yes, it's
6 tough. And I can see -- I touched a nerve with you
7 real quick.

8 COMMISSIONER HARDECKE: Well --

9 MR. ELY: And it's a two-way
10 street. When I first heard about this, it touched my
11 nerve. And it's a very tough issue, but we're going to
12 have to do something.

13 COMMISSIONER HARDECKE: Well, I'm
14 not -- I'm not defending the large operations because
15 I'm -- as a small operation, have suffered because of
16 what's happened with them, but --

17 MR. ELY: Do not want to --

18 COMMISSIONER HARDECKE: -- and I
19 will add this to the debate, right now the issue's over
20 confined animal feeding operations. But if we don't
21 address this in an orderly, scientific basis --

22 COMMISSIONER PERRY: Statewide.

23 COMMISSIONER HARDECKE: -- the next
24 thing that we will be doing is we will be saying that
25 you can't drive down a county road, you can't drive --

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1 you can't combine your field, you can't farm your land.
2 Because those are the issues being debated in
3 California today.

4 MR. ELY: Yes.

5 COMMISSIONER HARDECKE: So
6 agriculture is segmenting itself over this CAFO issues
7 and we'd better be careful or we won't have agriculture
8 left in this state.

9 MR. ELY: And I agree. Now, having
10 said that we were small time farmers. I've had hogs.
11 Go ahead.

12 COMMISSIONER PERRY: Well, and
13 specifically you know that it is this Commission's
14 responsibility to regulate CAFOs in this state. And I
15 would specifically like to hear that which you feel is
16 not -- has you concerned that those regulations that we
17 have passed are not appropriate for your protection.
18 And in what ways they're not, I am very anxious to
19 hear.

20 MR. ELY: All right.

21 COMMISSIONER PERRY: But I also
22 want to remind you that there are small hog operations
23 who produce the same kind of waste and many are those
24 are not so much as even putting them into a lagoon of
25 any sort. It is just plain running down the creek. I

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1 see that everyday. And in those cases, that is just as
2 much breaking the law as someone who has one of these
3 huge lagoons and let's them leak because the law says
4 you cannot pollute the waters of the state period,
5 whether you got 40 sows or whether you got 40,000 sows.
6 And a lot of people are missing that.

7 I heard a statement made that one
8 spill of a CAFO is greater than all the other spills in
9 the State of Missouri on small farms ever. And I
10 wanted to point out to you that that's never been
11 checked. We've never tested, but I can tell you that
12 they have polluted the waters of our state because we
13 all had to go on rural water because we couldn't drink
14 the creeks around us. And that was 20 years ago.

15 So I am very concerned about

16 protecting the environment, but I am also very
17 concerned that a lot of misinformation is being stated
18 out there with the intent of creating a lot of
19 emotional fervor to keep a certain segment of
20 agriculture out of the area.

21 MR. ELY: I apologize to you if
22 that's what you feel. I -- I've got -- I don't have
23 here. The sources I've been getting here are you know,
24 like reputable. I'm not taking this just off of the
25 internet somewhere. I had this reputable people, John

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1 Hopkins University, the CDC --

2 COMMISSIONER PERRY: Well, I can
3 tell you that the University of Missouri very clearly
4 understands this problem and is putting out information
5 that you don't have to go outside of the state lines to
6 get some good, accurate information. And that's why I
7 asked you if you had contacted them. They are well
8 prepared on this issue. And they are very willing to
9 come out and talk to you about it.

10 MR. ELY: And I will do that.

11 COMMISSIONER PERRY: And I will
12 give you the name and phone number.

13 MR. ELY: I will
14 appreciate it.

15 UNIDENTIFIED SPEAKER: I just had
16 one question. What we're seeing, I think, you're
17 seeing the same thing, we need a public hearing so both
18 sides can get their --

19 COMMISSIONER PERRY: Ron, I hate

20 the idea of sides.

21 UNIDENTIFIED SPEAKER: Pardon?

22 COMMISSIONER PERRY: I hate the
23 idea of sides. We all need to think --

24 UNIDENTIFIED SPEAKER: So that
25 everyone can discuss this.

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1 COMMISSIONER PERRY: -- about the
2 future of rural Missouri. And you all this is just the
3 hottest thing that's happened out there. And I live in
4 the middle of it, too. I'm a Pike County girl.

5 UNIDENTIFIED SPEAKER: What is
6 the -- and I don't even know if you can answer this --
7 how long does it take to process a CAF0 application
8 after the 30-day comment period was up?

9 MR. GALBRAITH: Well, the --
10 I mean the permit could be issued as soon as June 1st.
11 I mean on -- on, you know, our normal review time
12 schedule.

13 UNIDENTIFIED SPEAKER: Okay. So June 1st, we have
14 ample time -- you see, we're here for information. We
15 have ample time to have a public hearing before June
16 1st.

17 COMMISSIONER PERRY: I don't know
18 if our public hearings required to be heard. I mean is
19 a requirement to have a public hearing -- is the
20 requirement to have a public hearing if one is
21 requested?

22 MR. GALBRAITH: It's at the
23 department's discretion and we haven't made a decision

24 yet on this one.

25 MR. ELY: And I am

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1 sure Joe Maxwell will address that tomorrow at the
2 meeting.

3 COMMISSIONER PERRY: Will he be
4 having a public meeting tomorrow?

5 UNIDENTIFIED SPEAKER: Pardon?

6 COMMISSIONER PERRY: Joe
7 Maxwell's going to be --

8 MR. ELY: No. He's going to --

9 COMMISSIONER PERRY: --
10 submitting written comments; is that right?

11 MR. ELY: He's going to do written
12 comments and drop them off tomorrow when we're there.
13 He was waiting to the last minute trying -- as we're
14 getting more information.

15 I want to go back to one thing,
16 clarify one thing if I could.

17 CHAIRMAN HERRMANN: Thank you.

18 MR. ELY: It is kind of emotional
19 for me to, so I -- so that's -- so -- but I sometimes
20 do get a little excited. Never has it ever been -- you
21 know, I want to protect the little guy too. I'm
22 just -- and having studied this and then I won't say
23 anymore, I'm just not sure that CAFOs are just -- and
24 I'm just saying this for me, don't take this wrong --
25 when I started out I was not anti-CAFO at all.

1 COMMISSIONER PERRY: Have you
2 ever talked to some of the neighbors of the --

3 MR. ELY: I went over and visited
4 the Hayes' s.

5 COMMISSIONER PERRY: Pardon?

6 MR. ELY: I went over to the
7 Hayes' s CAFO.

8 COMMISSIONER PERRY: Hayes' s?

9 MR. ELY: Uh-huh. They run a
10 very -- and Larry Able' s farm. Because it' s not there.
11 Right? I mean, I want to go over and see for myself.

12 COMMISSIONER PERRY: What was
13 your impressi on there?

14 MR. ELY: Very clean.

15 COMMISSIONER PERRY: Could he be
16 your nei ghbor?

17 MR. ELY: Probably, probably at the
18 furrowing site. I don' t know about the -- I' d have to
19 check out more at the -- but like I said, my wife' s got
20 respiratory problems and she won' t be able to -- I
21 mean, well I say that. Documentation says that asthma
22 victims and it can -- that usually that' s a problem for
23 them. It' s very di ffi cult to guarantee which way the
24 wind' s going to blow.

25 And forget the odor, I don' t care

1 about that -- and the particles from this are going to
2 blow. And that' s what -- that' s where you get in
3 trouble. And I know the application is only, what, a

4 couple of times a year maybe? Two, two-and-a-half,
5 something like that? But there's a couple young kids
6 down the road I know their little girls both have
7 asthma, so for them it's going to be --

8 COMMISSIONER PERRY: And is he
9 filling in a new site or is this an expansion?

10 MR. ELY: This is a new site.

11 COMMISSIONER PERRY: He's
12 purchased the ground?

13 MR. ELY: Yes, he's been -- yes.
14 He made his last acquisition last January. To -- and I
15 think that was what it took to get the -- enough ground
16 for the filtration process.

17 COMMISSIONER HARDECKE: When you
18 were talking about the land application and the land
19 applications requirements have become more stringent to
20 where it takes more land and that has been done so that
21 there isn't the runoff. And you know, I think that is
22 a point of over concern.

23 I know that there's -- I've got the
24 fact sheet that's been going around and frankly there's
25 a lot of false statements on there and regrets to

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1 mention the University, the Missouri Department of Ag.

2 MR. ELY: The fact sheet going
3 around?

4 COMMISSIONER HARDECKE: That's
5 promoting these county health ordinances to exclude --

6 MR. ELY: Remember I didn't say
7 anything about county --

8 COMMISSIONER HARDECKE: I understand
9 that, but that's where a lot of these facts are
10 opposing --

11 COMMISSIONER PERRY: That's where
12 some of this opposition has been.

13 COMMISSIONER HARDECKE: -- CAFOs are
14 coming from.

15 MR. ELY: I think we would really
16 be better off from getting away from the -- in my
17 opinion, we'd be better off if we want to protect our
18 lakes and our environment better it's going to be tough
19 for us to do it and kill -- it's a very volatile issue
20 the health issues. I'd would a lot rather do it where they're
21 trying to do it with some kind of zoning ordinance.
22 Can we do that? I don't know.

23 I can tell you this much -- and I
24 don't even know what I'm talking about, so please
25 excuse me, but just in my head as far as a major lake

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1 I like Mark Twain, I would develop -- I would say that
2 was a greenbelt of something like that. Now, I've
3 heard that term, and to be honest with you I --

4 COMMISSIONER PERRY: Does that
5 Corp not have any of the set back requirements for Mark
6 Twain Lake?

7 MR. ELY: No, and the Corp. --

8 CHAIRMAN HERRMANN: In the
9 immediate shore of the lake.

10 MR. ELY: That's why there's --

11 COMMISSIONER PERRY: The set back

12 goes pretty far back because there's not -- there's no
13 hills because of it's flood. It's so many feet in
14 elevation back and I thought there was set back that
15 was part of the building zones around Mark Twain.

16 CHAIRMAN HERRMANN: Far as I'm --

17 MR. ELY: There's --

18 CHAIRMAN HERRMANN: (Inaudible)

19 high water is what the Corp owns.

20 COMMISSIONER PERRY: Pardon?

21 CHAIRMAN HERRMANN: Horizontal

22 distance from high water is what the Corp owns and you
23 can't build --

24 COMMISSIONER PERRY: I know, but

25 in the case of Mark Twain therefore, that is

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1 considerable distance from water because --

2 MR. ELY: Not --

3 COMMISSIONER PERRY: -- we don't

4 have hills up there. It's just flat and so it goes for
5 a long way.

6 MR. ELY: Yeah. Yeah.

7 COMMISSIONER PERRY: That's why

8 people can't build around the lake.

9 CHAIRMAN HERRMANN: That's right.

10 MR. ELY: You do have hills there.

11 COMMISSIONER PERRY: But if they

12 can't build by the lake how come they're building

13 lagoons by the lake?

14 MR. ELY: Well --

15 (End of Tape 4, Side 1)

16 (Start of Tape 4, Side 2)

17 COMMISSIONER PERRY: A

18 confinement operation 50 feet from the lake when you
19 got to go -- you can't see the lake.

20 MR. ELY: And we have

21 a --

22 UNIDENTIFIED SPEAKER: It was 50
23 feet from the creek that runs into the lake, which is
24 at high -- flood pool in 1993 less than a half a mile
25 from the lake. The -- the -- what they're proposing is

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1 a mile from the lake, but it's only 50 feet from the
2 creek that runs into the lake.

3 MR. ELY: I made a statement, maybe
4 that's where the confusion is. And I can show you this
5 spot. Well, there's more than one. Basically, you
6 cannot see the lake in most cases. The Corp has got
7 enough ground that you can't cut trees and so the trees
8 kind of block it out. In the wintertime, some
9 locations can see the lake through the trees, but
10 there's generally -- they try to keep the trees as a
11 barrier type thing. And in the summertime, you won't
12 see any homes around the lake when you're on the lake.

13 But having said that, there are
14 hills around Mark Twain Lake. And the one specific --
15 like I said, this is where I maybe confused you -- I'm
16 guessing, and I could check this out, but in this case
17 here there is a straight -- a hill that goes up quite a
18 ways. And a friend of mine, Larry Grant, used to live
19 there and I used to go down and visit him. And Larry

20 got cited because he went down there and cut some trees
21 off of the Corp property.

22 When you -- Larry's property is
23 setting right there and when you go down and start
24 walking towards the lake, you're only going to go about
25 5 or 600 feet to the lake.

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1 COMMISSIONER PERRY: But nobody's
2 trying to build a CAF0 on Larry's property, are they?

3 MR. ELY: All I'm saying is that
4 what's to stop them? There's nothing to stop them
5 unless there's something --

6 COMMISSIONER PERRY: The price of
7 the land because Larry's so close to the lake. That's
8 what's going to stop them. CAF0s don't go on fancy
9 land close to lakes. They try to look for the cheap
10 ground because they need land that's set back.

11 MR. ELY: No this is -- where this
12 property is, there's now a 60 -- I think it's 62 homes,
13 I think at last count, within a mile of this property.
14 It's very residential. We have \$350,000 homes directly
15 south of this. We just had a young couple, Jamie and
16 Sabrina Mudd, built a brand new house that's going to
17 be about 2 - 300 feet from his property, and they're
18 just sick.

19 COMMISSIONER HARDECKE: From the
20 property or from the buildings?

21 MR. ELY: From the property.

22 COMMISSIONER PERRY: And how far
23 from the --

24 MR. ELY: Because you do have
25 the -- the rule --

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1 COMMISSIONER PERRY: They have
2 set back requirements from the buildings.

3 MR. ELY: You cannot have a
4 residence, what, 1,500 feet from the -- how's that
5 work? There is a rule from the building.

6 COMMISSIONER PERRY: The set back
7 requirements for 1C.

8 COMMISSIONER HARDECKE: One-quarter
9 mile.

10 COMMISSIONER HARDECKE: Well,
11 they're set back.

12 MR. ELY: They back --

13 COMMISSIONER PERRY: They're set
14 back for confinement operations too.

15 MR. ELY: But as far as the
16 application --

17 COMMISSIONER PERRY: Okay. Now,
18 we're not -- see we're talking about different things.
19 There's an application of nutrients.

20 MR. ELY: Yes.

21 COMMISSIONER PERRY: That has a
22 set back requirement. But buildings from hog buildings
23 still have set back requirements too, do they not?

24 UNIDENTIFIED SPEAKER: (Inaudible).

25 MR. ELY: It's from the lagoon?

1 UNIDENTIFIED SPEAKER: I don't
2 know. (Inaudible).

3 MR. ELY: I thought it was the
4 building, but it could be from the lagoon. I --

5 COMMISSIONER PERRY: These are
6 some of the facts that we got --

7 UNIDENTIFIED SPEAKER: (Inaudible).

8 COMMISSIONER PERRY: -- to get
9 together and get all on the same page.

10 MR. ELY: As Tony said, I couldn't
11 even spell CAFO, honestly, three or four weeks ago. I
12 never --

13 COMMISSIONER PERRY: So your
14 century farm is a grain farm?

15 MR. ELY: Yes, it is. Grain and
16 cattle. So you could still --

17 COMMISSIONER PERRY: Those are
18 animals there.

19 MR. ELY: Yeah, but I'm a very --
20 I'm a well -- you know -- well, I could go into another
21 subject but I know we're all good and tired here, so --
22 but I really appreciate the opportunity to talk to you.
23 I -- I would think that this is going -- this has a
24 possibility of happening -- happening in other lakes.
25 I think there's a big push right now to get in the

1 northeast part of the state. And I can kind of explain
2 to you why I think that is. I don't --

3 COMMISSIONER PERRY: Hog prices
4 are up, that's why they --
5 MR. ELY: It sure doesn't -- that's
6 part of it. Sure. Sure.
7 COMMISSIONER PERRY: When we had
8 \$17.00 hogs this was not a problem. That was only five
9 years ago.
10 CHAIRMAN HERRMANN: We'll get your
11 comments into the department and then the department
12 will take it from there.
13 MR. ELY: All right. I appreciate
14 it greatly. I appreciate -- and I would like to -- I
15 would like to know who you would recommend contacting.
16 COMMISSIONER PERRY: I will speak
17 to you after the meeting.
18 MR. ELY: Okay. Sounds great.
19 Thank you.
20 MS. WEST: Can I say
21 something or do I need to fill out a card?
22 CHAIRMAN HERRMANN: Quickly.
23 MS. WEST: As director
24 of utilities in Moberly, even though I'm not in that
25 position any more, I participated in the North Fork

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1 Water Shed project, which was the water shed group
2 concerned with water quality in Mark Twain Lake because
3 it is a drinking water lake. And I believe that that
4 lake is listed on the 303(d) list possibly for some
5 things, I don't think nutrients is one of them.
6 COMMISSIONER PERRY: It wasn't.

7 I don't know if it still is.

8 COMMISSIONER HARDECKE: It was
9 atrazine.

10 COMMISSIONER PERRY: Atrazine?

11 UNIDENTIFIED SPEAKER: Is it
12 atrazine. I was thinking it was some other issues as
13 well, but I don't recall for sure. But I know that
14 there is --

15 COMMISSIONER PERRY: And I also
16 wonder if it wasn't even removed the last go around.

17 MS. WEST: It may have
18 been.

19 COMMISSIONER PERRY: On the last
20 list.

21 MS. WEST: I don't know
22 because that was 2002 and we were doing this after
23 that.

24 COMMISSIONER PERRY: But that's
25 interesting to know.

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1 MS. WEST: But you
2 know, I do know there is an active water shed group in
3 that area and they concerned. And several of the
4 larger farm groups were meeting with that group over
5 some of the nutrient issues and concerns in the area.
6 So Moberly's waste water plant actually discharges to
7 that water shed, if that gives you any size idea for
8 the size of that water shed.

9 COMMISSIONER HARDECKE: Looks like
10 atrazine and mercury.

11 MS. WEST: Atrazine and

12 what?

13 COMMISSIONER HARDECKE: And mercury.

14 MS. WEST: Mercury.

15 COMMISSIONER HARDECKE: Mercury from
16 atmospheric deposition, atrazine from corn and sorghum
17 production.

18 MS. WEST: I can tell
19 you that algae in the lake. It's pretty extreme during
20 the summer.

21 COMMISSIONER HARDECKE: What?

22 MS. WEST: The algae in
23 the lake. My sister owns one of those houses that you
24 can't see the lake from, but you can walk there. So
25 there is development occurring around the lake for

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1 recreation. Thank you.

2 COMMISSIONER PERRY: I appreciate
3 it.

4 CHAIRMAN HERRMANN: Thank you.
5 Anything else to bring before the Commission? Thank
6 you. We declare this meeting adjourned.

7 (Meeting adjourned.)

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10 Discussion to location of the May 3rd was discussed and was
11
12 decided to be left to the director.

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C E R T I F I C A T E

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STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

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I, Lisa M. Banks, CCR, with the firm of Midwest
Litigation Services, do hereby certify that I transcribed
from audio tapes the proceedings had in the above-entitled
cause in the caption sheet thereof; and that the foregoing
is a full, true and correct transcript of such audio tapes
to the best of my ability.

LI SA M. BANKS, CCR

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Respectfully Submitted,

Edward Galbraith
Director of Staff

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DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

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MISSOURI CLEAN WATER COMMISSION

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IN RE: Public Hearing - Proposed State Fiscal Year 2007
State Revolving Fund Intended Use Plan

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March 1, 2006
Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri

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BEFORE: Thomas Herrmann, Chairman
Ron Hardecke, Commissioner
Kristin Perry, Commissioner
Cosette Kelly, Commissioner
William Easley, Jr., Commissioner

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REPORTED BY:

21

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Jefferson City, MO 65109
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P R O C E E D I N G S

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COMMISSIONER HERRMANN: The Commission will begin the public hearing on the Clean Water State Revolving Fund Intended Use Plan for fiscal year 2007. The proposed -- or the purpose of this public hearing is to provide the Department opportunity to present testimony and to provide both the Department and the public the opportunity to comment on the Intended Use Plan for state fiscal year 2007.

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The public hearing is not a forum for debate or resolution of issues. The Commission asks that those commenting -- or, yes, those commenting limit their testimony to five minutes and not repeat comments that others have already made.

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The Commission will first hear testimony from the Department. Following the Department's testimony, the Commission will give the public an opportunity to comment. We ask that all individuals present fill out an attendance card so our records are complete. If you wish to present verbal testimony, please indicate that on your attendance card.

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When you come forward to present testimony, please speak into the microphone and begin by identifying yourself for the court reporter.

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Following the public hearing today, the

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Commission will review the testimony presented and make appropriate modifications to the proposal. The Commission

3 plans to take final action on May 3rd, 2006 meeting.

4 The court reporter will now swear in anyone
5 wishing to testify at this public hearing before the Clean
6 Water Commission today. Will all those wishing to comment
7 please stand.

8 (Witnesses sworn.)

9 COMMISSIONER HERRMANN: Thank you. The
10 Department testimony will be presented by Doug Garrett,
11 Financial Assistance Center.

12 MR. GARRETT: Good morning, Commission.
13 For the record, my name is Douglas Garrett. I'm the Unit
14 Chief of the Clean Water State Revolving Fund Program,
15 Financial Assistance Center.

16 In Tab 1 of your Commission packets is a
17 copy of the Intended Use Plan that was presented or placed
18 on public notice on January 27th. A copy of the draft
19 Intended Use Plan, along with a mailing list and comment
20 letters that we have received, have been also provided to
21 the court reporter.

22 I'd like to draw your attention to a couple
23 of items within the IUP that are of specific importance
24 for this issue, the Intended Use Plan. The first item is
25 on page 17 of your packet where we discuss the FY 2006

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1 capitalization grant that we anticipate we'll receive from
2 the Environmental Protection Agency.

3 The original federal appropriation for the
4 Clean Water State Revolving Fund was \$900 million.
5 However, Congress decided to withhold 10 percent of the
6 appropriated funds as we work through the disaster relief
7 efforts caused by the hurricanes. So as a result, we are
8 indicating in the Intended Use Plan that we will have
9 approximately \$17.9 million of 2006 capitalization grant
10 sometime during state fiscal year 2007.

11 With that said, in the event that Congress
12 reduces the withholding, and at this point it's our
13 understanding that it will be reduced, we will take the
14 funds that we do receive and put it towards projects.

15 Also, if you will turn to the handout, in
16 the handout to page 25 of the handout, it would be page 11
17 of the IUP, there is a table that lists the distribution
18 of funds. You should have in your blue folders a revised
19 table to be able to see what the differences are.

20 Some of the changes we have made, as far as
21 estimated fund commitments, we have been working, which
22 we'll hear about later today, on a spring closing. So
23 those numbers have been refined for projects for
24 participating this spring. We have adjusted the number of
25 funds committed for the Intended Use Plan.

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1 In addition, you will note that we have
2 under estimated fund commitments administration-audit.
3 The Environmental Protection Agency as part of their
4 annual review conducted in January of this year and
5 previously last year have requested the State obtain an
6 independent audit of the State Revolving Fund Program. This request
7 is due to the size of our program today; i.e., we have
8 over one and a half billion dollars in loans that we have
9 made since the inception of the SRF.

10 So we are going to be setting aside out of
11 the fiscal year 2006 capitalization grant \$1,000 -- or
12 \$100,000 for an independent audit. We will continue to
13 work with the Environmental Protection Agency to have that
14 audit completed sometime during the fiscal year. So the
15 funds available at this time are approximately

16 \$191 million.

17 Beginning on page 32 of the packet -- and
18 again, a revised project list has been provided in your
19 blue packet as well -- are the proposed lists for funded
20 communities. We have had some documentation within the
21 program that has been reviewed which impacts who would
22 qualify to be placed on a particular list, as well as I
23 personally made an omission when I compiled the list. I
24 was going to briefly run through those.

25 The City of Moberly, there was an omission.

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1 They should have been shown on the carryover fundable list
2 in the draft IUP for \$3.4 million, and they have been
3 added.

4 Additionally, we completed review within
5 the Department of documents relating to the City of
6 Warrensburg, so their project has been moved from the
7 planning list to the fundable -- or fundable list. Their
8 project's estimated cost at this time is a little over
9 \$14.1 million.

10 In addition, we know that two projects on
11 the non-point source list, which if you turn the page over
12 on page 37 of your packet, your blue packet binder, we have our
13 non-point source list. And we have had communications
14 from St. Charles County and the Upper White River group
15 that their proposed projects would not be during state fiscal
16 year 2007. So those communities have been removed from
17 the non-point source fundable list.

18 I'd like to point out that the Upper White
19 River group is working with some of the other area
20 agencies down in southwest Missouri to put projects
21 together to serve the need of that area.

22 And finally, we received correspondence
23 late the other day from the City of Lake Ozark indicating
24 that the dollar amount we had shown for them on our
25 planning list was in error. So that has been corrected

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1 for them.

2 Now if you will turn to page 42 of your
3 packet, lists the state-funded construction grants and loans,
4 specifically the 40 percent grant funded list.
5 The first project on that list is the City of Southwest
6 City. We have placed them at the top of the list, though
7 you will note that their priority points are lower than
8 the City of Plato.

9 The City of Southwest City had worked with
10 the Department to secure funding for a project back in the
11 late '90s, 1998. At that time the project had been
12 reviewed, duly noticed, and a construction permit had been
13 issued, and a day -- literally a day after the
14 construction permit was issued, the Department received
15 comments from Oklahoma's Department of Environmental
16 Quality.

17 Oklahoma was concerned that the proposed
18 limits for the City of Southwest City would not meet the
19 water quality standards of the State of Oklahoma.
20 Southwest City is located basically on the border between
21 Missouri and Oklahoma, and the receiving stream for
22 Southwest City flows into Grand Lake of the Cherokees.

23 So over the past number of years now there
24 have been a tremendous amount of communication and
25 cooperation between the Department of Natural Resources

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1 and the State of Oklahoma to resolve the water quality
2 issues and issue a permit limit for Southwest City.

3 Southwest City has gone through the process
4 of developing a new plan for treating their wastewater.
5 That plan is approvable at this time. I believe we're
6 waiting for a public hearing at the city level on that
7 plan. And the City in confidence that the public will be
8 in agreement with their plan. I can add, for the record,
9 as I understand it has corrected their design of the new
10 facility.

11 So the community has done basically
12 everything that they've been asked of us. We feel that --
13 staff feels that, no fault of their own, that they were --
14 found themselves between a hard place and a rock, and had
15 been committed to doing the right thing and having a
16 treatment facility that will meet the needs. So we have
17 placed them at the top of our funding list to receive
18 necessary funding.

19 It's also our understanding, and I believe
20 the consulting engineer who's here will be speaking
21 shortly regarding that project, that the City of Southwest
22 City also has funds that are being made available for this
23 project from the Department of Agriculture through a rural
24 development program.

25 Finally, we anticipate between now and the

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1 May Commission meeting that some communities will be
2 passing bond elections, will be submitting facility plans
3 to the program, which would enable them to move up on the
4 funding list. It is our intention that as those projects,
5 as we do throughout the year, meet the requirements to be
6 placed on the funding list, that we will place them on the
7 appropriate list in accordance with the IUP.

8 That concludes my remarks.

9 COMMISSIONER HERRMANN: Before we hear from
10 other people, I have one question, Doug. On page 19/33,
11 whichever number is appropriate, under the contingency
12 projects list, you list Sullivan third line down. In the
13 last meeting we had with the representatives from the City
14 of Sullivan they were withdrawing their request for funds
15 and securing their funds from elsewhere.

16 MR. GARRETT: That is correct. However, we
17 have not received a written notification from them stating
18 that they wanted to do that. Due to the tight time frame
19 that they are on, we were kind of hoping they would still
20 avail themselves of the funds that we have available to
21 proceed with their project.

22 We are still waiting on documentation that
23 was discussed at that meeting, and I believe you were at,
24 which we have not received yet. I believe that's a
25 geologic evaluation. A report was to be done, submitted

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1 to the Department. That has not been received as of
2 yesterday.

3 COMMISSIONER HERRMANN: Okay. Is there
4 follow-up due from the City of Sullivan? They were
5 supposed to report back.

6 MR. GARRETT: I believe there is.

7 COMMISSIONER HERRMANN: Someone was
8 supposed to report back to the Commission on a regular
9 basis. We've not heard a thing. Is that placed on the
10 agenda for the next meeting?

11 MR. GALBRAITH: We can do that, absolutely.

12 COMMISSIONER HERRMANN: Thank you. Is that
13 all?

14 MR. GARRETT: Yes.

15 COMMISSIONER HARDECKE: I have one

16 questi on.

17 COMMI SSIONER HERRMANN: Yes, sir.

18 COMMI SSIONER HARDECKE: Let's see. It's on
19 page -- well, it's the non-point source initiative, a
20 million dollars. What is that used for?

21 MR. GARRETT: We are trying to develop various
22 non-point source programs working with available
23 organizations. We are -- by law can provide low -interest
24 loans to brownfields, for example, to address water
25 quality issues, to improve the water quality, due to

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1 onsite programs such as the Ozark Clean Water Company,
2 which presentation was made at the last Commission meeting
3 regarding them.

4 So there's such an array of potential
5 non-point source uses for funds, we felt it best to go
6 ahead and set aside \$1 million, and then as a program or
7 some organization comes to us with a plan, we in turn will
8 present it to the Commission for approval, and those funds
9 would basically be there to be allotted to that particular
10 project.

11 COMMI SSIONER HERRMANN: I think we approved
12 that some year or more ago, did we not, set aside?

13 MR. GARRETT: Yes.

14 COMMI SSIONER HERRMANN: Which I think Becky
15 was handling at the time.

16 COMMI SSIONER PERRY: And is that like a
17 grant program?

18 MR. GARRETT: It's low-interest loan.

19 COMMI SSIONER HARDECKE: So at this time is
20 there any other -- anything else in that program besides
21 the Ozarks Clean Water Company?

22 MR. GARRETT: We received an application
23 and proposal here a week or so ago from the group called MACOG.
24 They're the overriding agency for regional planning
25 commissions to do an onsite program through several of

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1 their regional planning commissions, and we intend to
2 review that application and proposal and have a
3 presentation at the next Commission meeting to bring that before you.
4 And that -- should that proposal come to fruition, then
5 the funds will come out of that non-point source initiative.

6 COMMI SSIONER HARDECKE: So those funds
7 would have to be administered by some entity? You would
8 allocate them to an entity and --

9 MR. GARRETT: Right. Well, it would be
10 through the planning commissions.

11 COMMI SSIONER HARDECKE: In this instance,
12 but I mean your whole program, some group has to --

13 MR. GARRETT: Yeah. There has to be
14 somebody there that actually receives the loan, we can
15 make sure that the projects are done correctly.

16 COMMI SSIONER HERRMANN: Thank you, Doug.
17 We didn't get the cards delivered, but there were several
18 people who wanted to speak to this issue who were sworn
19 in. Yes, sir. Come forward.

20 MR. CRUMB: My name is Bob Crumb. I'm with
21 the City of Warrensburg, and I'm just very pleased that
22 we're on the list, and we want to thank DNR staff for
23 helping us to get there. If you have any questions, we're
24 available. Thank you.

25 COMMI SSIONER HERRMANN: Thank you,

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1 Mr. Crumb. Yes, sir?

2 MR. WEST: My name is Ray West, Hood Rich,

3 Incorporated, engineers out of Springfield. We're the
4 project consultants for Southwest City. I think Doug had
5 mentioned in terms of where the city's project has gone,
6 it's pretty up to date.
7 One thing that he did not mention is we do
8 have some CDBG money that was put in the project, and that
9 grant offer wasn't until December of this year, of '05.
10 We're on schedule, I believe, to have plans and
11 specifications in for review by mid April.

12 Any questions, I'd be glad to try to answer
13 those for you.

14 COMMISSIONER PERRY: Does that grant you
15 received change the amount?

16 MR. WEST: No. It was the last piece of
17 the funding puzzle.

18 COMMISSIONER HERRMANN: Thank you, sir.
19 Anyone else who wishes to address this subject?

20 If there's no one else, closing statement.

21 The Commission will receive written testimony on this
22 proposal until 5 p.m. on March 8, 2006. You may submit
23 written testimony to Malinda Overhoff, Secretary to the
24 Missouri Clean Water Commission, P.O. Box 176,
25 Jefferson City, Missouri 65102, prior to that deadline.

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1 On behalf of the Commission, I thank
2 everyone who has participated in this process. This
3 hearing is now closed.
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1 C E R T I F I C A T E
2 STATE OF MISSOURI)
3 COUNTY OF COLE) ss.
4 I, Kellene K. Feddersen, Certified
5 Shorthand Reporter with the firm of Associated Court
6 Reporters, and Notary Public within and for the State of
7 Missouri, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.
14 Given at my office in the City of

15 Jefferson, County of Cole, State of Missouri.
16

17 Kelene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.

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